

292.15

John Adams Library.



IN THE CUSTODY OF THE
BOSTON PUBLIC LIBRARY.



SHELF N^o

★ ADAMS

292.15

John Adams

THE
Clerk's Instructor
In the Practice of the Courts of
KING'S BENCH
AND
COMMON PLEAS:

Viz.

In suing out *Process*, entring *Appearances* and putting in *Bail*, drawing *Declarations*, *Pleas* and *Demurrers*, &c. making up *Issues* and *Paper-Books*, ingrossing and passing *Records*, making out *Venire Facias*, *Habeas Corpora* and *Distring' Jur'*, drawing *Briefs*, ingrossing *Posteas*, entring and docquetting *Judgments*, arresting *Judgments*, signing *Non Pross's*, suing out *Executions*, *Inquiry*, *Error*, *Certiorari*, *Habeas Corpus*, *Procedendo*, *Scire Facias*, *Superfedeas*, *Attachments*, *Originals*, *Audita Querela's*, &c. in Proceedings relating to *privileged Persons*, *Infants*, *Prisoners*, *Ejectments* and *Outlawries*, &c. and in passing *Fines* and suffering *Recoveries*.

The **Second Edition**, Carefully revised, and the Translation of the *Precedents* corrected from the *Errors* in the former Edition published by *Daniel Reading*, and now made conformable to the present Practice, with very large *Additions*.

By an ATTORNEY at LAW.

V O L. I. Containing
The Practice of the Court of King's Bench.

In the SAVOY:

Printed by HENRY LINTOT, (Assignee of *Edw. Sayer*, Esq;) for *J. Mozrall*, *C. Corbett*, *C. Ward* and *R. Chandler*, *J. Hodges*, *C. Hitch*, *G. Watkins*, *J. Robinson* and *E. Withers*. MDCCXLI.

xx ADAMS 292.15

THE
PREFACE.

THERE being, in most Branches of the Law, several useful and learned Treatises published for the Ease and Instruction of the Practisers; and a former * Treatise, bearing some Similitude with this, having gone through several large Impressions with the greatest Esteem and Approbation, when the Law Proceedings were in *Latin*; the late Mr. *Reading*, Editor of the first Edition of this Book, imagining it would be inferior to none in its Usefulness, the Proprietors published the said first Edition with great Success: And as there have been many subsequent Acts of Parliament, and Rules and Orders of the Courts of *King's Bench* and *Common Pleas*, whereby

* *Instructor Clericalis.*

The P R E F A C E.

whereby the Proceedings are much altered, great Care has been taken in this Edition to insert in their proper Places such Alterations, with Notes and Observations thereon; and likewise the Precedents throughout are carefully examined by the best in *Latin* extant, and compared with all the Books of this Kind published since the late Statute for the Proceedings being in *English*; and the whole made conformable to the present Practice: Also there are added, in this Edition, some useful Notes, relating to Amendments, Costs, &c. and the most exact Method of suffering Common Recoveries, with correct Precedents relating thereto, and other Matters worthy the Reader's Notice.

The Editor.

T H E

T H E
CLERK'S INSTRUCTOR.

The C O U N T I E S of E N G L A N D
and W A L E S.

E N G L A N D.

1	B E D F O R D -	21	Lincolnshire.
	S H I R E.	22	Middlesex.
2	Berkshire.	23	Monmouthshire.
3	Buckinghamshire.	24	Norfolk.
4	Cambridgeshire.	25	Northamptonshire.
5	Cheshire.	26	Northumberland.
6	Cornwall.	27	Nottinghamshire.
7	Cumberland.	28	Oxfordshire.
8	Derbyshire.	29	Rutlandshire.
9	Devonshire.	30	Shropshire.
10	Dorsetshire.	31	Somersetshire.
11	Durham.	32	Staffordshire.
12	Essex.	33	Suffolk.
13	Gloucestershire.	34	Surrey.
14	Hampshire.	35	Sussex.
15	Herefordshire.	36	Southamptonshire.
16	Hertfordshire.	37	Warwickshire.
17	Huntingtonshire.	38	Westmoreland.
18	Kent.	39	Worcestershire.
19	Lancashire.	40	Wiltshire.
20	Leicestershire.	41	Yorkshire.
	B		W A L E S.

W A L E S.

- | | |
|--------------------|---------------------|
| 1 Anglesea. | 7 Flintshire. |
| 2 Brecknockshire. | 8 Glamorganshire. |
| 3 Cardiganshire. | 9 Merionethshire. |
| 4 Carmarthenshire. | 10 Montgomeryshire. |
| 5 Carnarvonshire. | 11 Pembrokeshire. |
| 6 Denbighshire. | 12 Radnorshire. |

CITIES and TOWNS having a Sheriff or Sheriffs.

Cities of	{	Bristol,	}	Have two Sheriffs.
		Coventry,		
		Chester,		
		York,		
		Gloucester,		
		Lincoln,		
London,				
Norwich,				

Town of Nottingham,

Cities of	{	Canterbury,	}	Have one Sheriff.
		Exeter,		
		Litchfield,		
		Worcester,		
Towns of	{	Kingston upon Hull,	}	
		Southampton,		
		Pool,		
		Newcastle upon Tyne,		

Difference

Difference of Forms.

3

Difference of F O R M S.

King's Bench Forms.

1. **A**T London, to wit, in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap, London.

2. In the sixth Year of the Reign of the Lord George the Second, now King of Great Britain, and so forth.

3. Wherefore he prays Judgment if the aforesaid Plaintiff ought to have or maintain his Action aforesaid in this Behalf against him.

4. As to the coming with Force and Arms, or any Thing that is against the Peace of the said Lord the now King, saith, that he is not thereof guilty.

5. And of this he puts himself upon the Country, and the aforesaid Plaintiff likewise, — Therefore let the Jury come thereupon before the

Common Pleas Forms.

1. **A**T London, in the Parish of the Blessed Mary of the Arches, in the Ward of Cheap. *In the Declaration.*

2. In the sixth Year of the Reign of the Lord the now King.

3. Wherefore he Prays Judgment if the aforesaid Plaintiff ought to have his Action aforesaid against him, &c. *Conclusion to a Plea in Bar.*

4. As to the coming with Force and Arms, saith, that he is in no wise thereof guilty, as the aforesaid Plaintiff above complains against him.

5. And of this he puts himself upon the Country, and the aforesaid Plaintiff likewise; therefore the Sheriff is commanded that

Note; You write the Plaintiff's Name instead of the Word Plaintiff.

Difference of forms.

the Lord the King at *Westminster*, on *Tuesday* next after three Weeks of the Holy Trinity, and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c.

If the Plaintiff take Issue then.

And he prays, that this may be enquired of by the Country, and the aforesaid * *Defendant* likewise, &c. therefore let a Jury come thereupon, &c. as before.

And have there then this Writ.

Took and carried away.

At the End of a Declaration.

Sealed.

And other Enormities then and there did against the Peace of the said Lord the now King, to the Damage of the said (Plaintiff) of Ten Pounds, and thereof he brings Suit.

that he cause to come here from the Day of the Holy Trinity, in three Weeks, twelve, &c. by whom, &c. and who neither, &c. to make a Jury, &c. because as well, &c.

If the Plaintiff take Issue then.

And he prays, that this may be enquired of by the Country, and the aforesaid * *Defendant* likewise; therefore the Sheriff is commanded &c. as before.

And have there this Writ.

Took and drove away.

Signed.

Wherefore he saith, that he is made worse, and hath Damage to the Value of Ten Pounds, and thereupon brings Suit, &c.

And other Enormities, to the great Damage, and against the Peace.

Next

Next it will be proper to speak of the Four Terms, and their Returns for Writs.

Of the four Terms.

THREE Weeks after *Michaelmas-Day*, *Michaelmas-* (that is) the 20th Day of *October*, is the *Term always* *Effoin-Day of Michaelmas-Term*, and the fourth *begins the 23d* Day after inclusive, is the first Day of the *of October,* *except Sun-* Term, which is always the 23d of *October*, if *day.* it be not *Sunday*; but if *Sunday*, then the 24th, and endeth the 28th of *November*, if not *Sunday*, then the 29th. See the Statute 16 Car. 1. c. 6. for the Limitation and Abbreviation of this Term, and the Returns thereof.

Hillary-Term beginneth the 23d Day of *Hillary-* *January*, if not *Sunday*, but more exactly that *Term the 23d* Day eight Weeks on which *Michaelmas-Term* *of January,* ended (its *Effoin-Day* being *January 20.*) and *except Sunday.* endeth the 12th Day of *February*, if not *Sunday*, being always the same Day of the Week that *Michaelmas-Term* beginneth.

By reason you have often Occasion in *Michaelmas-Term* to make Writs returnable in *Hillary-Term*, before the common Almanacks are published, it may be of use to observe, that this Term beginneth the same Day of the Week that *Michaelmas-Term* endeth, and endeth the same Day of the Week that *Michaelmas-Term* beginneth, and both Terms begin the same Day of their respective Months.

Easter-Term beginneth the *Wednesday* Fort-*Easter-Term* night, or Seventeen Days after *Easter-Day*; *Wednesday* its *Effoin-Day* being *Sunday* before, but held *Fortnight* on *Monday*, and ends on *Monday* before *Whit-* *after Easter.* *sunday.*

Trinity-
Term Friday
after Trinity-
Sunday.

Trinity-Term beginneth the *Friday* after *Trinity-Sunday*, being the same Day of that Month on which *Easter-Day* fell on in its Month; its *Essoin-Day* being *Monday* before (for *Thursday* being *Corpus Christi*, it is pretermitted) and ends on *Wednesday* Fortnight after the Term beginneth. See 32 *H. 8 cap. 21*. This Term had Seven Returns, but by this Statute abbreviated for fear of an Infection.

The issueable Terms are *Hillary* and *Trinity* only, so called, because in them the Issues are joined, and the Records made up, which are to be carried down, and tried at the *Lent* and *Summer Assizes*, which immediately follow each of these Terms; and Note, that the whole Term, in Construction of Law, is accounted (in many Cases) but one Day, and therefore a Judgment had, or a Plea put in as of the first Day of the Term, but such Judgment shall not affect a Purchaser, but only from the Day such Judgment was sign'd.

Michaelmas

Michaelmas-Term contains five Weeks and two Days, and hath six Returns.

In the Common Pleas, and upon all Writs by Original.

1. FROM the Day of St. Michael in three Weeks.
2. From the Day of St Michael in one Month.
3. On the Morrow of *All Souls*.
4. On the Morrow of St. Martin.
5. On the Octave, $\left\{ \begin{array}{l} \text{or} \\ \text{In eight Days} \end{array} \right.$ of St. Martin.
6. From the Day of St. Martin in Fifteen Days.

In the King's Bench, upon Latitats, Alias, Plur. Distring. &c. and in all Cases by Bill.

- ON (*Monday*) next after three Weeks (from the Day) of St. Michael.
- On *Saturday* next after one Month (from the Day) of St. Michael.
- On *Saturday* next after the Mor. of *All Souls*.
- On *Monday* next after the Mor. of St. Martin.
- On *Monday* next after $\left\{ \begin{array}{l} \text{'the Octave,'} \\ \text{or} \end{array} \right.$ of St. $\left. \begin{array}{l} \text{eight Days} \\ \text{Martin} \end{array} \right\}$
- On *Monday* next after Fifteen Days (from the Day) of St. Martin.
- Mentioning a Day certain.

B 4

Hillary

Hillary-Term contains three compleat Weeks, and hath four Returns.

Common Pleas, and in B. R. if by Original. In King's Bench, in all Cases by Bill.

- 1. **O**N the Octave, } of St. Hillary.
or }
In eight Days
- 2. From the Day of St. Hillary in 15 Days.
- 3. On the Morrow of the Purification of the Blessed Mary.
- 4. On the Octave, } of the Purification of
or } the Blessed Mary.
In eight Days,

- O**N — next after } the Octave, } of St. Hil-
eight Days } lary.
- On — next after 15 Days of St. Hillary.
- On — next after the Morrow of the Purifica-
tion of the Blessed Virgin Mary.
- On — next after } the Octave, } of the
eight Days } Purifi-
cation
of the Blessed Virgin Mary.

Easter-Term contains three compleat Weeks, and hath four Returns.

- 1. **F**R O M the Day of Easter in 15 Days.
- 2. From the Day of Easter in 3 Weeks.
- 3. From the Day of Easter in one Month.
- 4. From the Day of Easter in five Weeks.
- 5. On the Morrow of the Ascension of our Lord.

- O**N — next after 15 Days (from the Day) of East.
- On — next after 3 Weeks (from the Day) of East.
- On — next after 1 Month (from the Day) of East.
- On — next after 5 Weeks (from the Day) of East.
- On — next after the Morrow of the Ascension of our Lord.

Mentioning a Day certain.

Trinity

Trinity-Term wants one Day of three Weeks, and hath four Returns.

Common Pleas, and in B. R. if by Original.

1. ON the Morrow of the Holy Trinity.

2. On the Octave, } of Holy Trinity.
or
In eight Days

3. From the Day of H. Trinity in 15 Days.

4. From the Day of H. Trinity in 3 Weeks.

In King's Bench, in all Cases by Bill.

ON - next after the Morrow of the H. Trinity.

On - next after } the Octave, } of the H.
or } eight Days } Trinity.

On - next after fifteen Days of the H. Trinity.

On - next after three Weeks of the H. Trinity.

Of Returns.

So that the Common Pleas Writs generally are returnable on no Day certainly expressed, but only before our Justices at Westminter, from the Day of St. Michael in three Weeks, — except Writs not by Original, as Attachments of Privileges, which must have a Day certain.

And so that the King's Bench Writs are mostly returnable on some certain Day of the Week next after some certain Return, as on Monday next after three Weeks of St. Michael, and the like, except the Proceedings to be by way of Original, and then as in the Common Pleas.

Of

Of Returns.

IN each Return throughout the respective Terms, are four special Days, to wit, 1. The Effoin-Day (that is) the Day in the Writ mentioned. 2. The Exception-Day. 3. The Retorna Brevium Day. 4. The Day of Appearance, which is the *4^{to} die post*, being the last of the Return, and the Day on which the Court sits.

The first Effoin-Day regularly in Law is accounted the first Day of the Term, and is the fourth Day inclusive, before what is commonly called the Beginning of the Term, and on that Day one of the Judges formerly sat to take Effoins, &c. So that the fourth Day after, commonly called the Beginning of the Term, seems to be a Day of Grace given by the Court for the Parties appearing.

The Effoin-Day of every Term is said to be (*in*) or now since the Translation of Proceedings (*on*) in the Return, as *In eight Days of St Hillary*, or *On the Octave of St Hillary*, and every Day after the Effoin Day is said to be (*after*) as *On Monday in eight Days of the Holy Trinity*, *On Thursday next after eight Days (or the Octave) of the Holy Trinity*.

The Day that every Term begins, and the Day every Term ends, are the first and last Days of Appearance.

As every Term is said to begin on the *4^{to} die post* of the first Return thereof, so it always ends the *4^{to} die post* of the last Return; but if the *4^{to} die* fall on a *Sunday*, the Term begins or ends on the *Monday* after, except in *Trinity-Term*,

Term, the *Essoin-Day* of the first Return whereof is always *Monday*, and regularly the 4^{to} die is the *Thursday* after, but that being *Corpus Christi Day*, and *Dies non Juridicus*, it is held the *Friday* after: Tho' the *Essoin-Day* fall on a *Sunday*, yet the 4^{to} die post is computed from that Day, as from any other, and is to be the *Wednesday* following; whereas had the *Essoin-Day* been *Monday*, the 4^{to} die would have been *Thursday*; and if the 4^{to} die, *Retorna Brevium*, or *Exception Days* fall on *Sunday*, the same are kept on *Monday* next following, and so is the *Essoin-Day* when it falls on a *Sunday*; and in such Cases, the *Exception* and *Retorna Brevium Days* are included in one, to wit, *Tuesday*. All the *Essoin-Days* in *Easter-Term* fall on *Sunday*, except *Craftin' Ascension'* (the *Morrow of the Ascension*) and so also do all of *Trinity Term*, except *Craft. Sta Trin.* (the *Morrow of the Holy Trinity*).

The *Essoin-Days* falling on *Sundays*, and held on *Mondays*, are the *Quind' Pas'* (or *fifteen Days of Easter*), *Tres Pas'* (three *Weeks of Easter*), *Mens' Pas'* (one *Month of Easter*) *Quinq. Pas'* (five *Weeks of Easter*), *Quinden' Trin'* (fifteen *Days of Trinity*), *Tres Trin'* (three *Weeks of Trinity*).

And note farther, That in the *King's Bench*, all *Process* both before and after Judgment, upon *Latitat*, *Alias*, *Pluries*, *Bill of Middlesex*, *Distringas nup. Vic. Habeas Corpus super Cepi Corpus*, and *Habeas Corpus ad fac. & rec.* must be returnable at *Days* certain, and may be so made upon any *Day* in *Term*, which is (*Dies Juridicus*) *prox' post* any of the aforementioned Returns.

And

*The same
Day Term be-
gins, Writs to
be returnable.*

And note, That the same Day of the Week that every Term begins, is a sure Day to make Writs returnable upon in the *King's Bench*, through all the Returns of every such Term (except the last Return.)

*No Court-
Days.*

But all *non-juridical* Days must be avoided, as *Sundays, All-Saints, All-Souls, on the first and second of November in Michaelmas-Term, the Feast of the Purification the second of February in Hillary-Term, Ascension-Day in Easter-Term; and Midsummer-Day in Trinity-Term* (if it so happens) are not *Dies Juridici* in the *King's Bench*.

Note also, If you make your Writs in the *King's Bench* returnable upon the *Essoin-Day* of any Return in the Term-time, as you may do, you must also express the Day of the Week certainly, as *On Thursday in one Month* (from the Day) of *St. Michael*, *On Thursday (in) the Morrow of All-Souls, &c.* But this is seldom used, but upon Trials and Writs of Inquiry, in order to get some Advantages in that Term: If your *Essoin-Day* happens on a *Sunday*, and therefore your Writ is returnable on the *Monday* after, you say *On Monday next after one Month* (from the Day) of *St. Michael*, and not *In one Month* (from the Day) of *St. Michael*. But the Form in the *Common Pleas* is *from the Day of St. Michael, &c.*

And in Notices under Copies of Process to be served on Defendants pursuant to *Stat. 5 G. 2. c. 27.* the Day of the Return must be inserted, altho' it happens to be on a *Sunday*. *Per Notice in the Offices, Hill 7 G. 2.*

So all Process by Bill in the *King's Bench* is returnable at a Day certain, naming the Day
of

of the Week, to wit, at *Westminster* on *Monday* in (but generally on *Thursday* next after) *the Morrow of the Purification of the Blessed Mary*, or the like; but if the Process is by Original, then it is *before us* (naming neither the Day of the Week, nor the Place) *On the Morrow of the Purification of the Blessed Mary, wheresoever we shall then be in England.*

Note also, That the Writs of the *King's Bench* returnable wheresoever, &c. as *On the Morrow of the Holy Trinity, wheresoever, &c. In eight Days of the Holy Trinity wheresoever, &c.* and the like, are Writs grounded upon Originals out of *Chancery*, or upon Writs of Error out of the *Common Pleas*, and out of inferiour Courts, Process to the Outlawry, *Restorn' habendum, Capias in Witherman, Audita Querela, Accedas ad curiam*, and such like.

So generally in the *Common Pleas*, all original Writs in Actions are returnable upon a C. B. *Returns in*
Return, as *On the Morrow of the Holy Trinity, From the Day of St. Michael in three Weeks, &c.* and so all Process and Proceedings thereupon.

But all Writs and Actions in the *Common Pleas* not by Originals out of *Chancery* and Proceedings thereupon, as Attachments of Privilege, Bills against privileg'd Persons, Prohibitions, and the like, are returnable, and have Continuance to Days certain, as *On Monday in one Month* (from the Day) of *Easter*, *On Tuesday next after one Month* (from the Day) of *Easter, &c.*

Jurisdiction

Jurisdiction and Authority of the Court of King's Bench.

THE Jurisdiction of this Court is general, and over all *England*, and hath Cognizance of both Criminal and Civil Causes, being divided into a Crown-Side and a Plea-Side.

Crown-Side.

The Crown-Side determines all Criminal Matters, wherein the King is Plaintiff, as Treasons, Felonies, Murders, Rapes, Robberies, Riots, Breaches of the Peace, and all Causes prosecuted by way of Indictment, Inquisition or Information, and into this Court, Indictment from all inferior Courts, and Orders of Sessions, may be removed by *Certiorari*, &c.

Plea-Side.

The Plea-Side holds Pleas of all personal Actions prosecuted by Bill or Writ, as Actions of Debt, Detinue, Covenant Account, and of all Actions of the Case, either upon Promises, Trover and Conversion, Words, Personal Statutes, and all other personal Actions, and likewise real and mix'd Actions, as Ejectment, Replevin, Trespass, *Quare clausum fregit*, *Waste*, &c. and against any Person in the Custody of the Marshal of the Court, (as every one sued here is supposed to be) and in all personal Actions against any Officer, Minister, or Clerk of the Court. This Court may examine and correct the Errors of the *Common Pleas*, and other inferior Judges and Justices; it can reverse a Judgment given in the *King's Bench* in *Ireland*; it can repeal the King's Letters Patent by *Scire facias*; it granteth a *Habeas Corpus*, on Motion, to relieve Persons wrongfully imprisoned, restores free Men unjustly disfranchised,

disfranchised, and may bail any Person whatsoever, where bailable by Law.

The Court of *King's Bench* had originally no Jurisdiction in any Action of *Debt* or *Covenant*, unless one of the Parties had the Privilege of this Court, or the Defendant was in Custody of the Marshal for some Trespass or Criminal Matter, and in that Case they had Authority to hold Plea of any such Action, but they could not issue their Process against a Person who was at large, and hold him to Bail in any Case of that Nature. To supply this Defect, in the Reign of King *Charles II.* they introduced a Clause in the Bill of *Middlesex*, and Writ of *Latitat* (which are their first Process) called an *Acetiam*, whereby the Defendant was to answer to a Bill to be exhibited against him in that Court by the Plaintiff, in a Plea of Debt or Covenant, as the Case happened to be; and by this Method they held the Defendant to Bail in an Action, in which otherwise they could have had no Authority to take Bail, and continue so to do at this Day.

The Judges and Officers of the Court of King's Bench.

THE Judges are the Lord Chief Justice, and three other Judges. The Chief Justice created by Writ, and the three others by Letters Patent.

*The Judges,
how created.*

The

The Judges and Officers

The Officers of the Crown-Side are,

The Clerk of the Crown, *James Burrows, Esq;*

The Secondary of the Crown-Side, *Mr. Henry Masterman.*

The Clerk of the Rules there, *Mr. Athorpe*, and eight other inferiour Clerks, who attend in the Crown-Office, and act as Attornies for the Dispatch of Business, the said *Mr. Henry Masterman*, *Mr. John Matthews*, *Mr. Richard Rose*, *Mr. Henry Walrond*, the said *Mr. Henry Athorpe*, *Mr. Charles Haddocke*, *Mr. Edmund Webb*, and *Mr. John Barb.*

On the Plea-Side are,

Chief Clerk.

The Prothonatory or Chief Clerk of the Court, who is Master of the *King's Bench* Office, and hath his Secondary who executes his Office, and his Clerks are the proper Attornies here, who subscribe all Writs, and enter up all Declarations, Pleas and other Proceedings in his Name, to wit, *Anthony and Bigge.*

The Master of the King's Bench Office.

The Secondary, who is commonly called the Master, constantly attends the Sittings of the Court, to receive Matters referred to him by the Judges, to be by him examined and reported to the Court; he signs all Judgments, taxes Costs, and informs the Court in Point of Practice, *Samuel Clarke, Esq;*

Deputy Stamper.

He hath also a Deputy, who keeps the Stamp for signing all *Latitats*, *Habeas Corpus*, *Certioraries*, *Scire facias*, *Procedendo's*, *Elegits*,
1
Restitutions,

Restitutions, Habere facias possessionem & Seisinam, Supersedeas, Prohibition; he also keeps Remembrances thereof, so that you may know if any one of those Writs be made out, by searching with him, also all Writs returned, *Posteas, Writs of Error, Special Bail* after they are accepted, and *Affidavits of the Plaintiffs Debt*, for issuing Process of ten Pounds or upwards, are filed in this Office; he generally receives all Money ordered to be paid into Court. Mr John Hawley.

The *Custus Brevium* is the chief Officer belonging to this Court, whose Office is to receive and keep all the Writs, and to put them on the Files every Return by it self, and at the End of every Term, to receive of the Master all the Records of *Nisi prius*, called the *Postea*. Custus Bre-
vium.

The Clerk of the *Nisi prius* examines and seals all Records of *Nisi prius* for Trials at the Assizes, and for London and Middlesex, and Clerk of the Effoins and Warrants of Attorney, and Clerk of the Treasury, where all Records of this Court are filed, and from him you take Numbers for Rolls, all Copies of Judgments and other Proceedings on Record. Clerk of the
Nisi prius.

Clerk of the
Effoins, War-
rants of Attor-
ney, and Clerk
of the Trea-
sury.

Now the Clerks of the *Nisi prius* are Mr. William Tully, Senior, Mr. John Sedgwick, and Mr. William Tully, Junior, and the Clerk of the Treasury, and *Custus Brevium* and *Recordorum* is Beversham Filmer, Esq; and Mr. Theodore Johnson.

The Clerks of the Papers receive all special Pleas, Demurrers and Pleadings sign'd by Counsel, and make up the Paper Books thereof, which the Plaintiff's Attorney always be-

The King's Bench Officers.

speaks, and they give a Rule on the Side of the Book for the Defendant's Attorney, to bring it to him again, to be enter'd in four Days, or else Judgment to go by Default ; and they constantly attend the Court, read all Affidavits, Records and Proceedings there, and enter down in their Books the Names of the Causes that are to be argued. *Mr. Edward Benton* and *Mr. Robert New.*

*Clerk of the
Declarations.*

The Clerk of the Declarations ; with him are left all Copies of Declarations, where the Defendant's Attorney is not to be found, and he makes an alphabetical Paper of such Declarations, that the Defendant's Attorney may search for, and have the same deliver'd to him ; with him are also filed a Copy of all Declarations against Prisoners, and in many Cases, Declarations ingrossed on Parchment. *Mr. Ralph Day.*

*Signer of Bills
of Middlesex.*

The Signer of the Bills of Middlesex keeps a Book of Entry of the Names of the Plaintiffs and Defendants, in all such Writs, and files all Affidavits of the Plaintiffs Debt for issuing such Bills of *Middlesex*, for ten Pounds or upwards, where the Defendant is to be arrested. *Mr. David Lewis.*

*Clerk of the
Rules.*

The Clerk of the Rules takes Notice of all Rules and Orders made in Court, except those of the Crown - Side, and afterwards draws them up, and enters them in a Book at large, for which he has eight Pence, and for the Copy of each Rule Four Pence, if in Term ; also he files all Affidavits used in Court, and makes Copies at Four Pence *per Sheet*, and with him are given all Rules of Course, as to *Answer* and *Reply*, or *Rejoin* and on *Postea's*,
Writs

The King's Bench Officers.

19

Writs of Inquiry, and Scire facias, &c. Mr. John Mundy.

The Clerk of the Errors allows all Writs of Error, and makes *Supersedeas* thereupon into *Errors*. what County you please; he also makes Transcripts of Records to be carried either into the Exchequer Chamber, or House of Lords. Robert Salkeld, Esq;

Note; There is a particular Clerk for the House of Lords.

The Clerk of the Common Bails and Postes Clerk of the files the Bail-Pieces, and marks the *Postes*, &c. *Common Bails*, and he or his Deputy attends in the *King's Bench Office* for that Purpose, and with him you file all Affidavits of the Services of the Process (for Common Bail) on the Defendant, if he does not appear. Mr. Charles Haddock.

The Clerk of the Docquets enters all Judgments, Issues and Proceedings in this Court; he keeps Docquets of all such Judgments and Entries, and with him you may find if any Judgment be entered, or any Record filed, and the Number-Roll thereof; he keeps a Book wherein you enter your Commitments and Surrenders, and another Book for entering your general Issues. Mr. John Lantrow.

Here are also Filazers in this Court, among whom the Counties are divided, who make the mean Process after the Original, in suing to the Outlawry, and have the Benefit of all Process and Entries thereupon: The Person chiefly used is the Filazer and Exigenter for London and Middlesex; Affidavits of the Debt are filed with him; he makes out all special Writs on Originals, and with him you enter your Appearance, or give Bail to such Writs. Mr. Thomas

Of the Laws of England.

mas Vaughan, Mr. Martin Lantrow, and Mr. Theodore Johnson.

The Master of the Seal-Office. The *Master* of the Seal-Office, who keeps the Great Seal for sealing all Writs issuing out of this Court. The most noble *William Duke of Cleveland*.

The Marshal. The *Marshal* of the *King's Bench*, or his Deputy, ought always to attend the Court, to receive into his Custody such Prisoners as shall be committed: And *note*, Every one sued in this Court, is supposed in the Declaration to be in his Custody; but by the Statute *William and Mary*, the Plaintiff may declare against Prisoners in other Gaols.

The Cryer. The Cryer makes Proclamation of Summoning and Adjourning the Court; calls Non-Suits, and swears Jurymen, Witnesses, &c.

The Tipstaff. There are *Tipstaffs* who attend each of the Judges in Court, and at the Chambers, and they take Persons into Custody by Rules of Court, or a Judge's Warrant.

The Porter. The Porter.

Of the Laws of England.

IT is not amiss that our young Clerk should be informed, at least in general, wherein consists the Law which he is to practice; towards which Purpose he may observe, that the Municipal Law of *England* consists of three Parts.

Common Law.

First, The Common Law, which is nothing else but the general Customs of the Kingdom, which were in Force before the coming in of *William the Conqueror*, and never were, nor yet

yet are collected or reduced into Writing, at least by any publick Authority.

Secondly, Particular Customs of certain Places, which only in those Places obtain the Force of a Law; as the Custom of *Kent*, where the Lands are which they call *Gavelkind* Lands, by that Custom descend to all the Heirs Male in equal Proportion; and several other Customs in Force only in that County. The Customs of *London*, which are very numerous. The Customs of Manors, by which some Lands descend to the youngest Sons; this Custom is called *Borough-English*: And these private or particular Customs differ from Common Law in this, that they only pass for Law in those Places where they have been received and allowed for Customs beyond the Memory of Man; whereas the Common Law is the general Custom in Force all the Kingdom over, unless altered by Act of Parliament, and not restrained to one particular Place.

Thirdly, the Statute Law or Acts of Parliament, which are Bills passed by both Houses of Parliament, with the Royal Assent thereto (and is superior to both the other Laws,) either to explain, alter, or annul the old, or enact new Laws.

And these are all comprehended in this Distich.

*Jus commune vetus, mores, consulta Senatus,
Hæc tria jus Statuunt, terra Britanna, tibi.*

And it may perhaps be said, That Part of the Civil Law, and the Canon Law, are also a Part of the Laws of *England*, they being in

Of Arrests and first Process.

King's
Bench.

Force, so far as they are consistent with the Laws of the Land, in Causes litigated in the Spiritual Courts, and Courts of Admiralty; but not being in Force in our Courts of Common Law, we do not take Notice of them as the Municipal Laws of the Land.

Reports.

Also adjudged Cases in approved Reports, are generally held for Law in the Courts of Justice; and even the Rules of Court do pass for Law in the Courts where they are made; at least they must be looked upon so by the Clerks and Practisers. As for Instance, If an Attorney do not plead in time, according to the Rules of the Court, Judgment and Execution shall often go against his Client without Remedy.

Of Arrests and first Process.

No Arrest
under 10 l.

BY Stat. 12 Geo. cap. 29. it is enacted, That in all Cases, where the Cause of Action does not amount to the Sum of Ten Pounds or upwards, in this or any other superior Court, or to the Sum of Forty Shillings or upwards, in any inferior Court, and the Plaintiff shall proceed by way of Process against the Person; in such Case, the Defendant or Defendants are not to be arrested, but must be personally served within the Jurisdiction of the Court, with a Copy of the Process; and if the Defendant does not appear at the Return of the Process, or within four Days after, the Plaintiff upon Affidavit made (of such personal Service) and filed in Court, may enter a common Appearance, or file common Bail for the Defendant, and proceed thereon, as if such Defendant

Defendant
served with
Copy of Pro-
cess.

Defendant had entered an Appearance, or King's filed common Bail himself; but if the Cause Bench. of Action shall amount to Ten Pounds or up- *If 10 l. or* wards, Affidavit shall be made and filed of *above, Affida-* such Cause of Action; which Affidavit may *vit must be* be made before any Judge or Commissioner *made thereof.* of the Court out of which such Process shall issue, authorised to take Affidavits in such Court, or else before the Officer who shall issue out such Process, or his Deputy; and for such Affidavit, one Shilling over and above the Stamp Duties shall be paid, and no more, and the Sum or Sums specified in the Affidavit, shall be indorsed on the Back of the Writ *And the Sum mentioned in* or Process, for which Sum or Sums so indor- *the Affidavit* sed, the Sheriff or other Officer to whom such *indorsed on the* Writ or Process shall be directed, shall take *Writ, the She-* Bail, and for no more; but if any Writ or *riff shall take* Process shall issue for Ten Pounds or more, *Bail for no* and no Affidavit and Indorsement shall be *more.* made, as aforesaid, the Plaintiff shall not proceed to arrest the Defendant, but shall proceed in the same Manner as is directed, where the Cause of Action does not amount to the Sum of Ten Pounds in a Superior Court, or Forty Shillings in an inferior Court. This Act to continue in Force five Years (from the 24th of June 1726) and from thence to the End of the next Session of Parliament. Continued by 5 G. 2. c. 27. from the End of that Session for Seven Years, &c.

Next, You must consider whether the De- *Peers, &c.* fendant be liable to an Arrest; for Peers of *not to be ar-* the Realm, Ambassadors and their Servants, *rested, and* (and Members of the House of Commons, and *how to proceed* their Servants during the Time of Privilege) *against such.*

Of Arrests and first Process.

King's
Bench.

are not to be arrested, Corporations and Companies cannot be arrested; but against these you must proceed by *Distringas*, of which more hereafter.

Attornies how
to proceed
against them.

And see more under Title *Bails*, for what Cases common and what special Bail is required.

Plead the same
Term as De-
claration deli-
vered at the
Suit of an
Attorney,
without Im-
parlan.e.

Also Clerks of the Office, and Attornies and privileged Persons belonging to the Courts of Justice, are not to be arrested, but must be sued in another manner; for if they are arrested, they may plead their Writ of Privilege, and come off without Bail. Against these you are to file a Declaration, of which you must deliver them a Copy, and they must plead the same Term, if you deliver it in time, and give Rules: And so it is, if a Clerk or Attorney be Plaintiff, the Defendant must give a Plea the same Term, and cannot imparle to the next, if the Declaration be delivered in time, and Rules given, tho' the Action be for Debt on a Bond or Case, and not Fees; and many unexperienced Practisers have been catch'd for not knowing this Rule, and their Clients taken in Execution, when they least feared it.

Wales and
County Pala-
tine.

And you must not only consider the Persons that are to be arrested, but also the Places where they live; for Instance, a *Latitat* is not in Force in *Wales*, nor in the Counties *Pala-tine*, neither is it in Force in the *Cinque Ports*, or their Dependancies. So that if the Suit be against any living in these Places, you must make out a *Latitat* with a special Direction to such Place, or you may proceed by *Quo minus* out of the Exchequer.

Quo Minus.

Also

Also in this Court you may have a Special *Ca- King's*
pias, by way of *Original*, in order for a Trial Bench.
 the same Term it is returnable, provided such *Capi- A Special Ca-*
as be returnable the first Return in *Hillary* or *pias, wherein*
Trinity-Term, or the first or second Return in *the Action is*
Easter or *Michaelmas-Term*. You must draw *set forth at*
large.
 a *Præcipe* or Instruction for the Philazer, where- *Vid. post. the*
 in the Action is set forth at large as in the De- *Method of su-*
 claration. But you may make out the *Capias* *ing out these*
 your self for Expedition, and carry it (with *Writs and Pro-*
 the *Præcipe* or *Pone*) for him to sign, it must *ceeding thereon.*
 be returnable *before us*, as *On the Octave of*
St. Hillary, wheresoever, &c. and not —
 next after the Octave, &c.

So then, taking it for granted, that the De-
 fendant is liable to an Arrest, and that he doth
 not live in any of these exempted Places, and
 that the Plaintiff is not a Clerk, or Attorney of
 the Court, (for then he may have an Attach-
 ment of Privilege to arrest the Defendant)
 in such Cases (after the Plaintiff has made
 Affidavit of his Debt). The first Process of *The Clerks in*
 the Court is generally a Bill of *Middlesex, Chancery are*
 which is a Precept of the Court, and not the *sued in the*
 King's Writ, nor in his Name, returnable at a *Petty-Bag Of-*
 Day certain; it hath no Test, nor is it used *fice.*
 but where the Plaintiff is to proceed by Bill,
 without original Writ. This Precept is to ar-
 rest (or a Copy of it to be served on) the
 Defendant in *Middlesex* only, and not else- *Bill of Mid-*
 where: But if the Defendant lives in *Lon- dlesex.*
don, or in any other County, then you must
 make out a *Latitat* directed to the Sheriff or
 Sheriffs of that Place. Which *Latitat* supposeth *Latitat.*
 also a Bill of *Middlesex* to have been sued
 out.

But

Of Arrests and first Process.

King's
Bench.

Original.

But for the better Understanding of the Nature and Reason of this *Bill of Middlesex*, we shall repeat something of the ancient Practice of the Court, which originally followed the King, and kept where-ever he was in *England*, and that is the Reason, that when you sue by *Original*, whereof you will hereafter find some Instructions, then all your Writs must be returnable, *wheresoever we shall then be in England*, and not at *Westminster*; which ancient Practice is still sometimes very necessary, pursuing the old Method used before the Court was settled at *Westminster*; after which Settlement this *Bill of Middlesex* was given to arrest Persons that lived in *Middlesex*; and if they could not be found there, the Sheriff returned, *that he is not to be found*, and thereupon a *Latitat* issued to take the Defendant in any other County; so that the *Latitat* was in the Nature of a *Testatum Bill of Middlesex*, and did always suppose a *Bill of Middlesex* to be taken out and returned before; and so it is recited in the *Latitat*, as you may observe by the Word *Testatum* (attested) therein, though the taking out of the *Bill of Middlesex* thereupon hath been long since omitted.

Bill of Middlesex may happen to be a Bill of any other County.

And here you must observe, that tho' it is generally called a *Bill of Middlesex*, yet it may happen to be a *Bill of any other County*; for Instance, when the Court of *King's Bench* was held at *Oxford* by reason of the Visitation, then it was a *Bill of Oxford*, and so supposed in the *Latitat*, and not *Sheriff of Middlesex*; and also observe, that the ancient Practice was, that the Plaintiff's Declaration, which

which is also called a Bill (as in the Record of King's *Nisi prius* (viz.) Brought here into Court then Bench. there his certain Bill, &c. being ingrossed in Parchment, was filed in the Office (as it is still used in many Cases) and very often the Return of the *Bill of Middlesex* was indorsed upon it: So that when the Proceeding is not by *Original*, nor by *Distringas*, which is against Peers of the Realm, Corporations and Bodies politick, nor against Clerks of the Office, and Attornies and Prisoners, the first Process generally used is this *Bill of Middlesex*.

Affidavits of the Cause of Action, in Order to hold the Defendant to Special Bail.

In the King's Bench,

A. B. of (Mercer) maketh Oath, that For Goods
C. D. of Yeoman, is indebted to him the fold.
said Deponent in the Sum of for Goods
sold and delivered (if only one Thing, as for a
Gelding, say, for a Gelding sold and deliver'd)
by the said Deponent to the said C. D.

A. B.

Sworn at the Day
of in the Year of
our Lord Before

Note; These Affidavits may be Sworn before a Judge or Commissioner of the Court, or before the Officer that issues the Process.

—Indebted to him the said Deponent and Com- The like
pany, (or the other Plaintiffs may be particular- where seve-
ly named) in the Sum of for Goods sold ral Plaintiffs.
and

- King's Bench.** *and delivered by him the said Deponent and Company to the said C. D.*
- Money lent and accom-** *— For so much Money by the said Deponent to*
modated. *the said C. D. lent and accommodated.*
- Had and re-** *— For so much Money had and received by the*
ceived. *said C. D. for the Use of the said Deponent.*
- Laid out and** *— For so much Money of the said Deponent*
expended. *for the said C. D. at his Request, paid, laid out and expended.*
- Due on Ac-** *— For so much Money due to the said Depo-*
count stated. *nent upon the Balance of Accounts stated by and between the said C. D. and the said Deponent.*
- For Work** *— For Work and Labour done and performed*
done and Ma- *by the said Deponent, (or the said Deponent's*
terials found. *Servants, or both as the Case is), and for Ma-*
terials (if any) about the said Work and La-
bour by the said Deponent found and provided.
- Meat, Drink,** *— For Meat, Drink, Washing and Lodging by*
Washing and *the said Deponent for the said C. D. found and*
Lodging. *provided.*
- For Journies,** *— For divers Journies taken by the said Depo-*
Horse-hire *ment, (or his Servant, &c.) for the said C. D.*
and Expen- *at his Request, and for Horse-hire and necessary*
ces. *Expences, in and about the said Journies.*
- For Fees, &c.** *— For Fees, Work and Labour, Money laid out,*
by an Attor- *Journies and Attendances of the said Deponent,*
ney. *in and about prosecuting and defending divers*
Suits and Actions; and for drawing and in-
grossing divers Deeds and Writings, and Money
laid out about the same, for the said C. D. (or
in fewer Words as in the next).
- For the same** *— Indebted to the said Deponent as Executor*
by the Exe- *(or Executrix) of the last Will and Testament,*
cutor or Ad- *(or as Administrator or Administratrix of all*
ministrato- *and singular the Goods and Chattels which*
of an At- *were) of E. F. Gent. deceased, for Fees, Work,*
torney. *Labour*

of the Cause of Action.

29

Labour and Journies, of the said E. F. in his Life-time about divers Affairs of the said C. D. and for Money by him the said E. F. in his Life-time about the same laid out and expended.

— *For divers Medicines and other Things belonging to the Business of an Apothecary by the said Deponent found and provided, administered and given to the said C. D. (or to his Wife, Child, Servant, as the Case is) at this Request.*

For Medicines, &c. of an Apothecary.

Note ; You may add for Goods sold, Money laid out, Journies and Attendances, &c. as Occasion requires.

— *For the Work and Labour in and about Curing a Wound (&c. as the Case is) of the said C. D. and for divers Things appertaining to the Business of a Surgeon, by the said Deponent about the same found and provided.*

For a Surgeon for the Cure of a Wound, &c.

— *For Principal and Interest due on a Bond entred into by the said C. D. E. F. and G. H. jointly and severally unto the said Deponent, in the penal Sum of ——— l.*

On a Bond.

— *That A. B. of ——— is indebted to the said Deponent C. D. in ——— upon a promissory Note, under the Hand of the said A. B. payable to the said Deponent C. D. or Order on Demand (or on a certain Day now past, or mention the Day as the Case requires.)*

On a Note by the Person to whom it is payable, against the Drawer.

C. D.

— *That A. B. of ——— is indebted to the said Deponent E. F. in ——— as Indorsee of one C. D. of a Promissory Note drawn by the said A. B. and payable to the said C. D. or Order, &c. (as above).*

By the Indorsee against the Drawer.

E. F.

— *That*

The second Indorsee against the Drawer.

— That A. B. of is indebted to the said Deponent G. H. in as Indorsee of one E. F. who is the Indorsee of one C. D. of a Promissory Note, drawn by the said A. B. and payable to the said C. D. or Order, &c. (as above).

G. H.

By the Indorsee against an Indorfor.

— That C. D. of is indebted to the said Deponent E. F. in as Indorsee of a Promissory Note drawn by one A. B. and payable to the said C. D. or Order, &c. (as above).

E. F.

By the second Indorsee against the first Indorfor.

— That C. D. of is indebted to the said Deponent G. H. in as Indorsee of one E. F. who is the Indorsee of the said C. D. of a Promissory Note, drawn by one A. B. and payable to the said C. D. in Order, &c. (as above).

G. H.

By the second Indorsee against the second Indorfor.

— That E. F. of is indebted to the said Deponent G. H. in the Sum of as Indorsee of the said E. F. who is the Indorsee of one C. D. of a Promissory Note drawn by one A. B. and payable to the said C. D. or Order, &c. (as above).

G. H.

Note; The same Method may be pursued, if there be more Indorsors or Indorsees.

On a Bill of Exchange, by the Person to whom payable.

— That C. D. is indebted to this Deponent A. B. in upon an Inland (or Foreign) Bill of Exchange, drawn by one E. F. upon the said C. D. payable to the said A. B. or Order on a Day

of the Cause of Action.

34

Day now past, and accepted by the said C. D. King's
according to the Custom of Merchants. Bench.

A. B.

—That L. M. of is indebted to the said The like by
Deponent J. T. in as Indorsee of one G. U. an Indorsee.
of a Bill of Exchange, drawn by one E. F. upon
the said L. M. payable to the said G. U. at a
Day now past, and accepted by the said L. M. ac-
cording to the Custom of Merchants.

J. F.

—Indebted unto this Deponent for a Year's For Rent.
Rent of a House, (Messuage, &c.) in due
to the said Deponent, at last past.

—For the Use and Occupation of a Messuage, For the Use
&c. in from to last. and Occupa-
tion.

—For Grasing, Feeding, or depasturing the For Grasing
Cattle, (or mention them in particular) of the of Cattle.
said C. D. from to last.

—For the Milk, Use, and Produce of Hire of
Milch-Cows by the said C. D. had and received, Milch-Cows.
or say, for the Hire of Milch-Cows.

—Indebted to the said Deponent A. B. in the For Boot on
Sum of which the said C. D. promised to an Exchange.
pay the said Deponent, upon an Exchange lately
made of a certain Mare of the said Deponent,
for a certain Horse of the said C. D.

In the King's Bench. A B. of Grocer A Quaker's
(being one of the Affirmation.
People called Quakers) solemnly affirms, that,
&c. (as above) is indebted unto this Affirmant,
&c.

Affidavits, &c.

King's
Bench.

&c. (according to what the Cause of Action is,
always saying, *Affirmant* instead of *Deponent*.
A. B.

Affirmed at *the* }
 in the Year of our }
 Lord *Before* }

*An Affidavit to obtain a Special
Acetiam.*

A. B. of W. in the County of S. Clerk,
maketh Oath, That on Thursday the 24th Day
of August last past, he, this Deponent, going
to view, whether the Tythe Hay, on the Lands
of C. D. of W. aforesaid, were ready to
be set forth, the said C. D. did then, in the
said Field, without any reasonable Cause, in a
violent Assault, beat and throw this Deponent
on the Ground, this Deponent making no Op-
position or Resistance against the said C. D.
but this Deponent being rescued by some Per-
sons present from the said D. the said D. did
again, as soon as he got loose from the Persons
that rescued this Deponent, a second time as-
sault, throw down, beat and kick this De-
ponent several times about the Head and Bo-
dy, so that the Blood gushed out of his Ears,
which occasioned this Deponent the Loss of his
Speech and Hearing for some Time, as to ren-
der him incapable of performing his Duty in
the aforesaid Parish, he being Minister of the
same. And this Deponent farther saith, that
he the said D. hath often declared, that it was
no Crime for any Man to kill or destroy this
Deponent. A. B.

Sworn the 20th of October 1732,
before me, Raymond.

Let

Bill of Middlesex.

33

Let a Latitat be issued forth against C. D. with an Acetiam of 20 l. at the Suit of A. B. upon this Affidavit.

King's Bench.
The Judge's Order thereupon.

Dated 20th of October, 1732.

Raymond.

The Form of the Bill of Middlesex.

Middlesex, ss. **T**he Sheriff is commanded that he take A. B. if he may be found in his Bailiwick, and him safely keep, so that he may have his Body before the Lord the King at Westminster, on Wednesday next after three Weeks (from the Day) of St. Michael (the Day of the Return) to answer C. D. of a Plea of Trespass, and that he have there then this Precept.

You may put four Defendants in one such Writ.

By Bill

Anthony and Bigge.

And on the Backside write the Attorney's Name that sues it out, and the Day of the Month.

On this Process, if the Plaintiff has not made Affidavit, or the Debt be under Ten Pounds, the Defendant is not to be arrested, but you must serve him personally (within the County of Middlesex) with a Copy of this Precept, with an English Notice under-written in this or the like Form.

Mr. A. B. You are served with this Process to the intent that you may by your Attorney appear in his Majesty's Court of King's Bench, at the Return thereof, being the Day of in Order to your Defence in this Action.

D

And

King's
Bench.

And if the Defendant does not appear at the Return of the Writ, or within four Days after, the Plaintiff (upon Affidavit being made of such personal Service, which Affidavit shall be filed *gratis*) may file common Bail for the Defendant, and proceed thereon in the same Manner as if such Defendant had himself filed common Bail; but if the Action be for Ten Pounds or above, and Affidavit has been made, as is before directed, the Sum mentioned in such Affidavit must be indorsed on the Back of the Writ or Process, in order to hold the Defendant to good Bail; then after the Words of a Plea of *Trespass*, you must add,

Debr.

* Or 20, 30,
40 l. accord-
ing as the
Sum is in the
Affidavit.

And also to (of) a Bill of the said C.D. against the aforesaid A.B. for Ten * Pounds (of) Debt, according to the Custom of the Court of the said Lord the King, before the King himself to be exhibited, and that he have, &c. (as above.)

Against two
in Debt sepa-
rately.

And also to (of) a Bill of the said C.D. against the said A.B. and C. D. for 40 l. (of) Debt severally, according, &c.

Vid. Acetiam against several Defendants for several unequal Sums in Debt and Case after the *Latitat*.

Note; No
Acetiam a-
gainst Execu-
tors or Admi-
nistrators, or
Heirs at Law.
Trespass.

Or if there be any other special Cause for Bail, it must be added with an (*Acetiam Bille*); for *Trespass* alone will not hold the Defendant to Bail. As

If for *Trespass* and taking away Goods, say,
For taking and carrying away the Goods and Chattels of the said C. to the Damage (of the said C.) of twenty Pounds, according to the Custom, &c. as before,

For

Bill of Middlesex:

35

For detaining the Goods and Chattels of the said C. to the Value of Forty Pounds, according to, &c. King's Bench. Detinue.

For converting and disposing of the Goods and Chattels of the said C. to the Value of Forty Pounds, according to, &c. Trove.

For Breach of Covenant, to the Damage of the said C. Sixty Pounds, according to the Custom, &c. as before. Covenant.

And also of (to) a Bill of the said C. against the aforesaid A. for Twenty Pounds upon Promise, according to the Custom, &c. as before. Assumpsit.

But in Case the Cause of Action is for Words or Ejectment, or Trespass only, no Special Bail is required. Yet if it be a dangerous Assault and Battery, as the breaking a Man's Skull, the endangering the Loss of an Eye, or a Mayhem, the Plaintiff may make Affidavit before one of the Justices, setting forth his Case, and the Judge, as he sees Cause, will order the Defendant to be held to Bail in such Sum as he shall think fit, and then 'tis usual to insert in the Writ, Stat. 13 Car. 2. cap. 2.

And also of (to) a Bill of him C. D. against him A. B. for beating, wounding and evil-treating (abusing) to the Damage of the said C. Twenty Pounds, according to, &c. or as the Case is; and the Plaintiff's Attorney ought to be careful not to omit such holding the Defendant to Bail, lest after the Trial, the Defendant being cast should absent himself. An Affidavit must be made of the Facts.

Having made your Bills of Middlesex on a Piece of Parchment (but you may buy Blanks ready for filling up) you must also make a Note on Paper, which you are to carry with your

King's
Bench.

Writ into the Office, where you get such Writ signed in this Manner.

G. B.

Middlesex, ff. *Bill for C. D. against A. B.*
Returnable Wednesday next
after three Weeks (from the
Day) of St. Michael.

Pleadwell.

G. B. signifies
good Bail.

If it require Bail, you must mark the Paper with a *G.* over the Defendants Christian Name, and a *B.* over his Surname, and a Stroke under both, as you see above.

The Bill is to be signed at the *Bill of Middlesex* Office, and the Note and Affidavit of the Debt to be left there, for which Signing you pay in the Term-Time Six Pence, and in the Vacation Ten Pence.

A special
Warrant to
charge any
Person in Cu-
stody of an Of-
ficer, or a
Warrant upon
an Original,
Et fa. &c. is
2 s 4 d.
Alias Bill.

Upon this Bill you must have a Warrant at the Sheriff of *Middlesex's* Office, which costs Four Pence.

And if in *Westminster*, the Warrant from the High Bailiff costs Two Shillings and Four-Pence.

If the Defendant be not taken upon the first Bill, you may make an *Alias*; and if not upon that, then a *Pluries*; only saying, *The Sheriff is commanded as formerly he was commanded, that he take, &c.*

Pluries Bill.

———— *As oftentimes he has been commanded, &c. for the signing of which Writ you pay but Two Pence, if within a Year after the first or second Bill sued out, setting down the Time that the first Bill of Middlesex was made out.*

If

If the Defendant lives in any Liberty, where King's the Sheriff of *Middlesex* may not enter, make Bench. out a *Non Omittas Bill* of *Middlesex*, by pur- *Non Omittas.* suing the same Method hereafter directed for suing out a *Non Omittas Latitat*.

The Form of a Non Omittas Bill of Middlesex.

Middlesex, to wit. **T**HE Sheriff is commanded, That he do not forbear by Reason of any Liberty in his County, but that he take, &c. as in a common Bill of *Middlesex* to the End.

You pay the same for this *Non Omittas Bill*, as for a common Bill of *Middlesex*.

You may save the Statute of Limitations, by suing out this *Bill of Middlesex* within six Years after the Debt, &c. contracted, and getting of it returned, *Non est inventus*, by the Sheriff, then enter it on a Roll, and file the *Bill of Middlesex* with the Signer of the *Lati-tats*, and carry the Rolls to the Clerk of the Docquets, who will enter it, and you afterwards file the Roll, as in common Cases.

Latitat.

The Entry of a Bill of Middlesex on the Roll to save the Statute of Limitations, is thus,

Middlesex, ss. **T**HE Sheriff is commanded,
That he take A. B. and E. H.
if they may be found in his Bailiwick, and
them safely keep, so that he may have their
Bodies before the Lord the King at Westmin-
ster, on Wednesday next after three Weeks
(from the Day) of the Holy Trinity, to answer
unto C. D. of a Plea of Trespass, and also of
(to) a Bill of the said C. against the aforesaid
A. for Twenty Pounds, upon Promise, according
to the Custom of the Court of the said Lord the
King, before the King himself to be exhibited;
and have there then this Precept.

By Bill. Anthony and Bigge.

At which Day before the Lord the King at
Westminster came the aforesaid C. in his pro-
per Person, and offered himself against the a-
foresaid A. B. in the Plea aforesaid, and the
Sheriff of Middlesex, to wit, D. R. Knight,
and T. H. Knight, returned that the aforesaid
A. is not to be found in his Bailiwick.

The Form of a LATITAT.

Stamp treble
6d.

GEORGE the Second, by the Grace
of God, of Great Britain, France and
Ireland King, Defender of the Faith, &c. to
the

the Sheriff (or Sheriffs) of

Greeting: King's

Whereas we lately commanded our Sheriff of Bench, Middlesex, that he should take

C. D. and E. F. if they might be found in his Bailiwick, and them safely keep, so that he might have their Bodies before us at Westminster, at a certain Day now past, to answer unto A. B. of a Plea of Trespas. And * also to (of) a Bill of the said A. against the aforesaid C. for Ten Pounds (of) Debt, according to the Custom of our Court before us to be exhibited, and our said Sheriff of Middlesex at that Day returned

You may put four Defendants in one Writ, but if there be but one Defendant, and your Blank is made in the plural Number, you may put in John Doe or Richard Roe as Defendants, but take no Notice of them in the Note for the Office.

* If it be only in Trespas, you must leave out the *Acetiam*; otherwise you must put it in as before directed in a Bill of Middlesex.

to us, that the aforesaid C. and E. were not to be found in his Bailiwick, whereupon on the Behalf of the aforesaid A. in our Court before us, it is sufficiently attested, that the aforesaid C. and E. (abscond, ——— run up and down and secrete themselves,) lurk and wander about, (up and down) in your County; Therefore we command you (ye) that you (ye) take them, if they may be found in your Bailiwick, and them safely keep, so that you (ye) have

The Teste of this Writ may be made any Day in Term that is a Day in Court, but the usual

Way is, in Term-Time, if to make the Teste thereof, the first Day of Term; but if it be made in the Vacation, then make the Teste thereof the last Day of the precedent Term. 2 Salk. 700.

If it be against several Defendants, for several unequal Sums in Case and Debt, then it must be, and also to the Bill of the said R. against the aforesaid John for 20 l. upon Promise, and against the aforesaid R. for 30 l. of Debt according to, &c. If against several Defendants in Case, you say, And also to the Bill of the said N. against the aforesaid John for 20 l. upon Promise, and against the aforesaid K. for 30 l. upon Promise, &c. But if two are severally bound in a Bond of 20 l. then the *Acetiam* must be for 20 l. of a Debt severally, and the same of a Note for 20 l. upon Promise severally.

King's
Bench.

their Bodies before us at Westminster, on Thursday next after three Weeks (from the Day) of St. Michael, to answer to the aforesaid A. of the Plea (and Bill) aforesaid, and have there then this Writ. Witness Sir William Lee, Kt. at Westminster the Day of in the Fourteenth Year of our Reign.*

Anthony and Bigge.

Note for the
Office.

You must make a Note in Paper for the Office thus, thus.

G. B.

Somerſet, ff. *Latitat* for A. B. against C. D. and G. B.

E. F. returnable on Wednesday next after three Weeks of St. Michael. Pleadwell.

Marking it as above, if the Cause require Bail.

Qui tam.

If it be for a *Qui tam* upon a penal Statute, you say, *To answer A. B. who as well for us as for himself in this Behalf prosecuteth of a Plea of Trespass (only).*

At the Suit
of an Exe-
cutor.
Administra-
tor.

——— *To answer to A. B. Executor of the last Will and Testament of W. W. decess'd.*

——— *To answer to A. B. Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of W. W. decess'd.*

Note, That upon a *Qui tam* in the Common Pleas some Filazers insist for a Fine to be paid the Curſitors, but not in the King's Bench.

A *Latitat* to the County Palatine of Lancaster.

G E O R G E the Second, &c. (as before) *To our Chancellor of our County Palatine of Lancaster, or to his Deputy there, Greeting.*

Greeting. Whereas we lately commanded our Sheriff of Middlesex, &c. (as in a common Latitat) do run up and down and secrete themselves in your said County Palatine; **Therefore** we command you, that by our Writ, under the Seal of our said County Palatine, in due manner to be made, and directed to the Sheriff of the same County, you command the same Sheriff, that he take the said C. and E. if they may be found in his Bailiwick, and safely keep them, so that you have their Bodies before us at Westminster, &c. (as in a Common Latitat to the End).

King's
Bench.

To the County Palatine of *Chester*.

— To our Chamberlain of our County Palatine of Chester, or to his Deputy there greeting; &c. (as above).

To the County Palatine of *Durham*.

— To the Reverend Father in Christ, Edward by Divine Providence, Bishop of Durham, or to his Deputy there, greeting, &c. (as before) **Therefore** we command you, that by our Writ under the Seal of our Bishoprick Palatine of Durham, duly to be made, and directed to the Sheriff of the said County, you command the said Sheriff to take the said C. and E. if, &c. (as before).

To

King's
Bench.

To the Cinque Ports or their Members.

—To the Constable of our Castle of Dover, or to his Deputy there, greeting. Whereas, &c. (as in a common Latitat) *secrete themselves* (then say) *in your Bailiwick* (instead of *your County*), &c.

Note; The Cinque Ports are *Hastings, Romney, Hythe, Dover, and Sandwich*. And *Rye, Winchelsea and Seaford*, three ancient Towns, and within the same Jurisdiction, are Members of the 5 Ports.

The *Latitat* filled up, you carry it with the Note to the *King's Bench* Office in the *Temple*, where your *Latitat* must be signed, for which you pay 2 s. 6 d. and you must leave the Note * with the Signer.

* And the
Affidavit of
the Debt
when
Bailable,

Being signed, you carry it to the Seal-Office, and he who seals for the *King's Bench* will seal it, and stamp the Day on the Back, for which you pay 7 d.

The next Thing is to get a Warrant upon it from the Sheriff of the County.

The Entry of a Latitat on the Roll to prevent the Statutes of Limitations occurring.

England, ff. **T**HE Lord the King hath sent to the Sheriff of Suffex his Writ closed in these Words, to wit, **George**
the

the Second, by the Grace of God, of Great Bri- King's
tain, France and Ireland King, Defender of Bench.
the Faith, &c. to the Sheriff of Sussex, Greet-
ing. **Whereas** our Sheriff of Middlesex, &c.
(and so on to) and have there then this Writ.
Witness Sir William Lee, Kt. at Westminster,
the Twenty-fifth Day of June in the Four-
teenth Year of our Reign. Anthony and Bigg.
At which Day (the Return of the Writ) be-
fore the said Lord the King at Westminster
came the aforesaid A. B. in his proper Person,
and the Sheriff of the County of Sussex, to wit,
J. M. Baronet, returned, that the aforesaid Eli-
zabeth is not to be found in his Bailiwick, and
the same Elizabeth did not come. Therefore the
Sheriff is Commanded, as formerly he was Com-
manded, that he should take the aforesaid Eli-
zabeth, if she was to be found in his Bailiwick,
and her safely keep, so that he might have her Body
before the said Lord the King at Westminster,
on — next after (the Return of the *Alias*)
to answer to the aforesaid A of the Plea aforesaid.
The same Day is given to the aforesaid A
there, &c.

If the Defendant cannot be arrested upon
(or served with a Copy of) the *Latitat*, you
may sue out an *Alias Capias*, and if not upon
that, then a *Pluries Capias*.

The Form of an Alias Capias.

GEORGE the Second, by the Grace of
God, of Great Britain, France and Ire-
land King, Defender of the Faith, &c. to the
Sheriff of Somerset, Greeting. We command
you, as formerly we commanded you, that you
take

Alias Capias.

take C.D. and E.F. if they shall be found in your Bailiwick, and them safely keep, so that you have their Bodies before us at Westminster on Thursday next after three Weeks (from the Day) of St. Michael, to answer to A. B. of a Plea of Trespass, **And** also to (of) a Bill of the said A. against the aforesaid C. and E. for Ten Pounds (of) Debt, according to the Custom of our Court, before us to be exhibited; and have there then this Writ. **Witness** Sir William Lee, Knt. at Westminster, the 25th of June in the Fourteenth Year of our Reign.

Anthony and Bigge.

And indorse the Name of the Attorney that sues it out, and the Day of the Month.

Pluries
Capias.

The *Pluries Capias* is the same with the *Alias*, only saying, *We command you, as we have oftentimes commanded you, &c.*

You must make a Note for the Office, in like manner, as for the *Latitat*.

G. B.

Somerſet, ff. **Alias** for A. B. against C. D. and G. B.

E. F. returnable on Thursday next after three Weeks (from the Day) of St. Michael.

Pleadwell.

You must insert on the Bottom of your *Præcipe* when the original *Latitat* issued out.

Of signing the
Alias and
Pluries.

The *Alias* and *Pluries Capias* must be signed at the King's Bench Office, for which you pay no Fee or Duty.

After

After your *Alias* or *Pluries* are signed, you ^{King's} get them sealed, as above, and pay Seven Pence ^{Bench.} for each.

Note; You may continue your *Pluries Capias* from Term to Term, until the Defendant be arrested; but observe, that if the *Latitat* was not renewed within five Terms after it was taken out, then you cannot renew it by *Alias* or *Pluries*, but you must sue out a new *Latitat*.

Note; When there are three or four Defendants in one Writ, and some of them special, and some not, as if your Directions be for a Bill or *Latitat* for *A. B.* against *C. D.* for 10*l.* of Debt, *E. F.* in Trespas *G. H.* for 17*l.* 10*s.* 8*d.* upon Promise, *J. K.* for Conversion and carrying away Goods and Chattels to the Damage of 100*l.* then after the Words of a Plea of Trespas, you say, **And also** to (of) a Bill of the said *A. B.* against the *aforesaid C. D.* for 10*l.* (of) Debt, and against the *aforesaid G. H.* for 17*l.* 10*s.* 8*d.* upon Promise, and against the *aforesaid J. K.* for Con-
verting and disposing of the Goods and Chattels of the said *A.* to the Value of 100*l.* according to the Custom of our Court, before us to be exhibited, &c.

Acetiam.

In Debt,
Assumpsit,
Trover.

If two of the Sums be alike in Debt, or on Promise, as *A. B.* against *C. D.* and *E. F.* for 40*l.* in Debt, and *G. H.* in Trespas.

Then say, **And also** to the Bill of the said *A.* against the *aforesaid C. D.* and *E. F.* for 40*l.* of Debt severally, according to, &c. or for 40*l.* upon Promise, &c.

In Covenant say, For Breach of Covenant to Covenant the Damage of the said *A.* 30*l.*

Note; If any of your Defendants live within a Liberty where the Sheriff may not enter, you

King's
Bench.

Mandavi
Ballivo.

you must get the Sheriff to direct his Warrant on your Writ to the Bailiff of such Liberty, who may execute it ; but if the Bailiff of such Liberty do not execute it, then you must at the Return of your Writ, get the Sheriff to return a *Mandavi Ballivo* thereon, and thereupon you may make out a Writ called a *Non Omittas*, directed to the Sheriff, and upon that Writ the Sheriffs Officers may, upon the Sheriff's Warrant made out thereon, enter and execute the Warrant within such Liberty.

The usual Practice is, you sue out a *Latitat* or Bill of *Middlesex* into the County where the Liberty is, and a *Non Omittas* at one and the same Time, but make the *Latitat* returnable before the *Teste* of the *Non Omittas*, which must be *tested* the fourth Day inclusive of the Return of the *Latitat*.

The Form of the Non Omittas.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. to the Sheriff of Somersetshire, Greeting. We command you, that you do not omit, by Reason of any Liberty within your County, but that you enter it, and take C. D. if he may be found in your Bailiwick, &c. as in an Alias Capias.

If you sign the *Non Omittas* at the same Time with the *Latitat*, you pay nothing for signing thereof, but only 2 s. 6 d. for the *Latitat*.

Bail-Bond.

King's
Bench.

WHEN the Sheriff arrests the Defendant, he by his Officers takes a Bail-Bond for the Defendant's Appearance at the Return of the Writ. By the Act 12 Geo. 1. cap. 29. the Sheriff shall take Bail for no more than the Sum indorsed on the Writ.

But if the Defendant is served with a Copy of the Process, the Action requires only 2 common Appearance, and then an Attorney may cause common Bail to be filed for the Defendant at the Return of the Writ; or if the Defendant neglect to appear, or cause common Bail to be filed, the Plaintiff, on Affidavit being made and filed in Court of the personal Service of the Writ*, may within eight Days after the Return enter a common Appearance, or file common Bail in the Defendant's Name, and proceed thereon. The Form of a common Bail-Piece you will find hereafter.

** See the Form
post.*

But where the Defendant is arrested on any of the aforesaid Writs, and doth not appear, that is, doth not file Special Bail, as the Writ requires, then the Plaintiff's Attorney must call on the Sheriff for a Return of the Writ, that is, an Answer indorsed on the Back of the Writ, whether the Defendant be arrested or not. If the Sheriff make Delay, as it often happens, when the Bail-Bond is not brought into his Office, or when the Officer hath taken insolvent or insufficient Bail, or hath let the Defendant escape, then the Plaintiff's Attorney must give a Rule with the Clerk of the Rules

*Of calling on
the Sheriff for
a Return of the
Writ,*

*and Rule to
return it.*

for

King's
Bench.

*Motion to a-
merce the Sher-
riff.*

*Judge's Sum-
mons.*

*Of Rule to
bring in the
Body.*

for the Sheriff of the County to return the Writ, and serve the Sheriff or his Deputy with a Copy. If the Sheriff doth not return the Writ at the Time mentioned in the Rule, the Plaintiff's Attorney may move at the Side-Bar to have the Sheriff amerced, shewing the Rule wherewith he was served; and the Clerk of the Rules, who always attends there, will draw up the Side-Bar Rule, and then you may estreat the Amerciament into the Crown-Office, which costs two Shillings a Piece; but the usual Course is to shew the Sheriff the Rule, and tell him you will estreat the Amerciaments, if he doth not return the Writ: If he doth still delay you, you may summon him before a Judge, to shew Cause, or at last move the Court against him; but see the Rule hereafter mentioned.

When you have a *Cepi Corpus* returned, if there be no Appearance or Bail, you may have a Rule to bring in the Body, if you do not like the Bail which the Sheriff has taken, and amerce him the first Time 40 s. and moving at the Side-Bar, double the Amerciaments from Time to Time, till you have enough to answer the Debt, which you may also estreat. The Rule to be drawn up with the Clerk of the Rules, will cost each Time Three Shillings, which must be served on the Sheriff, or his Deputy from Time to Time, or you may, upon the Sheriff's not returning the Writ upon the first Rule, upon Affidavit of Service of such Rule, move for a peremptory Rule for him to return the Writ at a certain Day; which, if he disobey, the Court, upon Affidavit of Service, will grant a Rule for him to

shew cause why an Attachment should not issue against him, which seems to be the most speedy way of proceeding. But now by a Rule of this Court of *Michaelmas* 6 G. 2. Sheriffs or Undersheriffs, upon being served with a Rule peremptorily to return any Writ of this Court, or to bring in the Body of the Defendant within six Days after Notice, if the same be not done in the said Time, will be liable to an Attachment without a farther Rule as heretofore. If the Defendant doth not yet put in Bail, you may have a *Habeas Corpus* on the *Cepi* (which see after) or you may proceed by *Amerciaments* as before, and so you may, if the Sheriff do not return the *Habeas Corpus* : But generally the Sheriff having taken good Bail (upon a Rule given on the *Cepi* when the Rule is out) will assign you the Bail-Bond, and many times upon Request without a Rule, ‘ And then you may arrest the Defendant and the Bail, at the Suit of the Sheriff on that Bond, but you must not put an *Acetiam Bille*, in the Writ, tho’ the Penalty of the Sheriff’s Bond be never so great ; for there is no Bail required at the Sheriff’s Suit ; you must also observe that if the same Sheriff be still in his Office, your Writ must be directed to the Coroners of the County, and they must grant you a Warrant on the Writ, for which they will take 2 s. 4 d. a Name, and so ought your *Venire Fac.* to be to the Coroners : But if a new Sheriff be sworn, then you may make your Writ to the new Sheriff, and proceed as in other Cases.

*Of Assigning
Bail-Bond.*

*This Practice
is altered by 4
& 5 Anne.
See after.*

Coroners.

E

But

King's
Bench.

But this Practice is altered by the *Stat. 4 & 5 Anna, Sect. 21.* for the Amendment of the Law, whereby it is enacted, That if any Person or Persons shall be arrested by any Writ or Process issuing out of any of her Majesty's Courts of Record at *Westminster*, at the Suit of any common Person, and the Sheriff or other Officer taketh Bail from such Person against whom such Writ, Bill or Process is taken out, the Sheriff or other Officer, at the Requests and Costs of the Plaintiff in such Action or Suit, or his lawful Attorney, shall assign to the Plaintiff in such Action the Bail-Bond, or other Security taken from such Bail, by indorsing the same, and attesting it under his Hand and Seal, in the Presence of two or more credible Witnesses, which may be done without any Stamp, provided the Assignment

The Stamp is double 6 d.

May bring Action on the Bond.

And the Court by Rule gives the Plaintiff Satisfaction.

Such Rule to be a Defeazance.

so indorsed be duly stamp'd before any Action be brought thereupon, or other Security taken for Bail be forfeited; the Plaintiff in such Action, after such Assignment made, may bring an Action and Suit thereupon in his own Name, and the Court where the Action is brought, may, by Rule or Rules of the same Court, give such Relief to the Plaintiff and Defendant in the original Action, and to the Bail upon the said Bond, or other Security taken from such Bail, as is agreeable to Justice and Reason; and that such Rule or Rules of the said Court shall have the Nature and Effect of a Defeazance to such Bail-Bond or other Security for Bail.

But since the Act of 12 *George*, the Bail are not to be arrested on the Assignment of the Bail-Bond, but you make a Copy of the Writ

Bail-Bond.

51

Writ on the Bail-Bond, and personally serve King's the Defendant and his Bail. Bench.

The former Act also provides, That the Attorney for the Plaintiff or Demandant in any Action or Suit, shall file his Warrant of Attorney with the proper Officer of the Court where the Cause is depending, the same Term he declares; and the Attorney for the Defendant or Tenant shall file his Warrant of Attorney, as aforesaid, the same Term he appears, under the Penalty inflicted on Attornies by any former Law for Default of filing the Warrants of Attorney.

If you are for the Defendant in the Action, then the best Course to stay Proceedings on the Bail-Bond, is first to put in Special Bail, and then give Notice that you will move the Court, that the Secondary may tax the Costs on the Bail-Bond, and * alledge that you are ready to receive a Declaration in the original Action, and to plead and try it that Term, and not to delay the Plaintiff. Upon such Notice, and a Motion to the like Purpose, the Court will make a Rule; draw up that Rule, and carry it to the Secondary, and he will appoint a Day when both the Attornies shall attend him, and the Plaintiff's Attorney being served with the Rule and Appointment, brings in the Bill of Costs, which the Secondary taxes, and the Defendant must forthwith pay and receive the Declaration.

Of staying Proceedings on Bail-Bond.

** You need not alledge in the Notice.*

Many Times the Attornies agree these Things amongst themselves without troubling the Court.

King's
Bench.

If the Attorney for the Plaintiff will not agree, you may summon him before one of the Judges of the Court, who will make an Order to the same Purpose at his Chambers, provided you apply in Time ; that is, before the Plaintiff has lost the Advantage of a Trial, or obtaining Judgment against the Principal, and putting the Plaintiff in as good a Condition as if the Bail-Bond had not been assigned.

Of Bail.

*When Bail to
be put in, or
Bail-Bond as-
signed.*

IF the Action be in *London* or *Middlesex*, andailable, you must within four Days after the Return of the Writ, (exclusive of the Appearance Day) put in Bail above, or the Bail-Bond may be assigned. *In any other County than London and Middlesex, the Defendant has six Days after the Return of the Procefs, (exclusive of the Appearance Day to put in Bail).* Per Reg. Cur. Mic. 8 Annæ.

If the fourth or sixth Day happens to be a Sunday, the Defendant has the next Day to put in Bail.

If the Defendant is arrested in any Action within the Distance of Forty Miles from *London*, and no Bail is put in above, or Bail-Piece transmitted within eight Days after the taking thereof to one of the Judges, the Bail-Bond may be assigned ; but in Case it be above Forty Miles Distant from *London*, Bail must be put in above, or the Bail-Piece transmitted within fifteen Days after the taking thereof, unless the Judges be in their Circuits, and

and then as soon as any of them return to King's Chambers, otherwise the Bail-Bond may be Bench-assigned. *Vid. post.*

When you have put in Special Bail, you must give Notice to the Plaintiff's Attorney of the Names, Places of Abode, and Additions of Trade or Vocations, that the Plaintiff may know how to inquire after them, in this manner.

Notice of putting in Bail.

Mr. E. F.

A. B. against C. D.

Take Notice that Special Bail is put in, in this Cause, before (Mr. Justice Chapple) and the Bail are,

E. F. of — in the County of — Blacksmith, and

G. H. of — in the said County, Carrier.

Yours,

J. P.

Attorney for the Defendant.

29th Oct. 1740.

Twenty Days are allowed to except against Exception. Bail after Notice of its being put in, *per Reg. Cur' Mic. 16 Car. 2. Trin. 4 W. & M. Mic. 8 Anna.* And this Exception is to be made

King's
Bench.

Justification.

in the Bail-Book at the Judge's Chambers. And after Notice of such Exception, You should add or justify, if Notice be in Term, in 4 Days; and if Notice be in the Vacation, on the first Day of the subsequent Term. *Per Reg. Cur' E. 5 G. 2.*

Notice of excepting against Bail.

Mr. J. P.

A. B. against C. D.

Take Notice that I have excepted against the Bail put in, in this Cause.

Yours,

E. F.

Attorney for the Plaintiff.

31st Oct. 1740.

Bail cannot be justified before a Judge at his Chambers, except by Consent, or for Necessity in the Vacation; and in the latter Case it ought to be justified again in Court in Term. *But see the latter End of the Rules for taking Special Bails in the Country, post.*

If the Plaintiff excepts against the Bail, and you justify in Court, you must desire the Judge's Clerk before whom the Bail was taken, to bring up the Bail-Piece to Court, for which

which you pay him 2 s. 6 d. and then justify King's your Bail in Court ; but you must give the Bench. Defendant's Attorney Notice of such Justification, and an Affidavit must be made of the Service thereof ; and if the Defendant is not in Court, the Bail must each swear they are worth double the Sum the Action is for.

Sometimes a catching Practiser will bring the Defendant in Person into Court, and then he appears in Person, and so it is mentioned If the Defendant ap- on the Bail-Piece ; and therefore it is fit when you have Notice of Bail to be given in Court, pear in Person, must de- that you do attend : For then if the Defendant clare in three Days, by takes the Bail will give you Notice, if you be Stat. 8 Eliz. present, and you must declare within three cap. 2. Days, or else may be non-pross'd with Costs.

But here *Note*, That if the Defendant be held to Special Bail, and that he doth not really owe the Plaintiff 10 l. the Defendant may have a Summons from any of the Judges of the Court of *King's Bench*, for the Plaintiff to attend the Judge, to shew his Cause of Action ; then the Defendant's Attorney must make a Copy of the Summons, and deliver it to the Plaintiff's Attorney, shewing him the Original at the same Time, and the Defendant's Attorney must attend the Judge at the Time limited in the Summons ; and if the Plaintiff doth not make Oath, or prove that the Defendant owes him 10 l. the Judge will order the Defendant to file common Bail, and all Proceedings on the Bail-Bond to stay, and the Defendant's Attorney must file a common Bail-Piece. If the Plaintiff doth expressly make Oath there is 10 l. due to him, the Defendant

E 4

will

Of Bail.

will not be admitted to make Affidavit to the contrary; but if the Plaintiff's Attorney do not appear on the first Summons, the Defendant must take out a second, a third, and serve them, and attend; and it is often of great Consequence to the Defendant not to be held to Bail.

Note; This seldom happens now, the Plaintiff being obliged to make an Affidavit of his Debt before the Defendant can be arrested.

In what Cases Special Bail is required.

NOTE; In the Court of King's Bench, if the Defendant be Indebted to the Plaintiff, by Bill, Bond or otherwise, to the Value of 10 *l.* or upwards; you may force him to put in special Bail, as the Act 12 *Geo.* 1. directs.

But in Case for Words, Ejectment and Trespas, Bail is not insisted on, except in some special Cases, and if the Court so order.

Neither is special Bail required against Heirs, Executors or Administrators, in any Action brought against them; unless in such Case where they have wasted the Goods of the Testator.

By the Rules of this Court, Special Bail is required in all Causes of Removal, be it by *Habeas Corpus*, *Writ of Privilege*, *Certiorari*, or the like, except where the Defendant is sued as Executor or Administrator; for then he is to give special Bail upon the Removal.

Note;

Note; the Defendant is not obliged to give the King's Plaintiff's Attorney Notice of Bail being put in Bench. on the *Habeas Corpus*, and if the Plaintiff does not take out a Rule for better Bail in 28 Days time, the Bail must stand.

Vid. Tit. Arrests and first Process, ante.

Of Common Bail.

IF the Defendant be served with a Copy of the Process, he must appear at the Return, and the manner of Appearance in the *King's Bench* is by Bail, which is either Common or Special, as the Case requires; and it is to be written on Parchment, and filed in the Office, if Common, and before a Judge, if Special, as is before observed: Which Appearance or Common Bail, by the *Stat. 5 & 6 Will. 3. cap. 21.* and *9 Will. 3. cap. 25.* the Defendant was to enter or file within eight Days after the Return of the Process, on which the Defendant was arrested, on Penalty of 5 *l.* to be paid to the Plaintiff, for which the Court would immediately award Judgment, and the Plaintiff might take out Execution.

But now by the *Statute 12 Geo. 1.* if the Defendant is served with a Copy of the Process, and does not appear within four Days (but by the *Stat. 5 Geo. 2. c. 27.* within 8 Days) after the Return thereof; the Plaintiff on Affidavit being made of such Service, and filed with the Clerk of the Rules, may file Common Bail for the Defendant, and proceed thereon

King's
Bench.

thereon as if such Defendant had filed Common Bail himself.

*The Form of an Affidavit of Service of
Copy of Process.*

In the King's Bench,

Between } C. D. Plaintiff,
 and
 } A. B. Defendant.

E. F. of Gent. maketh Oath, That he
this Deponent, on the Day of
Personally served the said Defendant with a
true * Copy of a Bill of Middlesex, (or Latitat, &c.) and at the same Time shewed him the
said Bill, (Latitat, &c.) which appeared to this
Deponent to be regularly issued out of this
Honourable Court, against the said Defendant,
at the Suit of the abovesaid Plaintiff, return-
able on next after under which
said Copy was (written, or subscribed) a Notice
to the said Defendant of the Intent of such
Service.

* To say served the said Defendant with a Writ or Process by delivering him a Copy (as a great many Praetisers do) is very foreign to the express Words of the Statute.

E. F.

Sworn at the Day
 of in the Year
 of our Lord be-
 fore

Note ; This Affidavit may be sworn before a Judge, Commissioner, or Clerk of the Common Bails of this Court.

The

Of Common Bail.

59

The Bail-Piece is usually cut out in the King's
Bench.
Shape and Proportion as follows.

A Common Bail-Piece upon Cepi Corpus or Appearance.

*Of the Term of St. Michael in the
Sixth Year of the Reign of King
George the Second.*

The Term
the Writ is
returnable
of.

Middlesex, ss.

Plead-
well, At-
torney.

A. *B. of the Parish of St.
Martin in the Fields
in the County aforesaid,
Gentleman, is delivered to
Bail upon Cepi Corpus to
John Doe of London, Yeoman,
and Richard Roe of
the same, Yeoman.*

At the Suit of C. D.

*Note; Double
6 d. Stamp
on Parch-
ment.*

Or

Of Common Bail.

King's
Bench.*Or thus,*

*Of Term in the Year of
the Reign of King George the
Second.*

Middlesex, ss. *A.* *B. having been served
with Process is deli-
vered to Bail to*

L. At-}
torney. }

*John Doe,
and
Richard Roe.*

At the Suit of C. D.

*Note ; If filed by the Plaintiff's Attorney,
write at the Bottom of the Bail-Piece thus,*

Filed according to the Statute.

The Bail-Piece is to be filed with Mr. *Haddock*
in the King's Bench Office, for which you pay,
if of the same Term it is filed, 1 s. 2 d. if in
the Vacation 4 d. more for a *Post Terminum*.

The

King's
Bench.

*The Special Bail-Piece before a
Judge, is made thus upon a
Cepi Corpus.*

Of the Term, &c.

Somerſet, ſſ. **A.** B. of C. in the County
aforeſaid, Gent. is deli-
vered to Bail upon a Cepi Cor-
pus to

Pleadwell
Attorney for
the Defen-
dant.

} D. E. of &c. (naming the
Persons that are Bail, their Ad-
ditions and Place of Abode)

At the Suit of
G. H.

This Bail
by Rule of
Court ought
to be filed
(that is)
taken from
the Judge's
Chambers,
and left with
the Signer of
the Latitats
within twen-
ty Days, if
the Plaintiff
accepts it.

*Note; Double
12 d. Stamp.*

Note ;

King's
Bench.

Note ; It is enacted *Stat. 4 W. & M. c. 4.* That Bail may be taken in the Country before a Special Commissioner for that Purpose, authorised by the Judges of the *King's Bench*, *Common Pleas*, and Barons of the *Exchequer* respectively.

In the *King's Bench* there are Orders put forth by the Judges for that Purpose, which are as follow.

O R D E R S to be observed by Commissioners for taking Special Bail in the Country, upon Actions and Suits depending, or to be depending in His Majesty's Court of King's Bench.

For the Time
of putting in
Bail, see be-
fore.

First, **I**T is ordered, That the Bail-Piece shall be fairly drawn and ingrossed in Parchment, in the Form following, viz.

Middlesex, ss. **J**ohn Doe of Islington in the County aforesaid, Gent. is delivered in Bail upon a Capi Corpus, To John Denn of Hackney in the County aforesaid, Gentleman, and Richard Fen of Highgate in the County aforesaid, Gentleman.

Taken and acknowledged the
24th Day of
August 1732,
before A. B. one
of the Commissioners, &c.

At the Suit of
Richard Roe.

And

And taking of the Recognizances, these Words must be used (*viz.*) to wit, King's Bench.

You (calling the Bail by their Names) *do* Words to be used.
jointly and severally undertake, That if the
Defendant (naming his Name) *shall be condemn-*
ed in this Action at the Suit of the Plaintiff
(naming his Name) he shall satisfy the Costs and
Condemnation, or render himself into the Custody
of the Marshalsea of the Court of King's Bench,
or you will pay the Costs and Condemnation for
him.

And if any Bail be given upon any Action or Actions, removed out of any inferior Court by Writ of *Habeas Corpus*, and returnable in the Court of *King's Bench*; then instead of writing *Super Cepi Corpus*, as before, you must write *Upon* Cepi Corpus.
a Writ of Habeas Corpus; and instead of writing Hab. Corpus.
the Plaintiff's Name (as aforesaid) you must write,
At the Suit of the Plaintiff in the Plaint; and the Cognizors must undertake, that if the Defendant be condemned at the Suit of the Plaintiff or Plaintiffs in the Plaint, that he shall satisfy the Costs and Condemnation, or render his Body, &c. as aforesaid.

Secondly, It is ordered, That the Affidavit Affidavit to be made.
for the due taking of every such Bail, shall be made either before some Judge of the *King's Bench*, to whom the Bail shall be transmitted, or before some Person who shall have Power to take Affidavits in Matters and Causes depending in the said Court.

Thirdly,

King's
Bench.

Of transmitting
Bail.

* To be taken
if in any
County (ex-
cepting
London and
Middlesex)
in six Days
after the Re-
turn of the
Process, ex-
clusive of the
Appearance
Day. Per Reg' Cur' Mic. 8 Annæ.

Thirdly, It is ordered, That all Bails taken by any Commissioner within the Distance of Forty Miles, from the Cities of *London* and *Westminster*, shall, be transmitted to the Lord Chief Justice of the Court of *King's Bench*, or to one of the Justices of the said Court, within eight Days after the (*) taking thereof, and all Bails taken by any Commissioner above the Distance of Forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within fifteen Days after the taking thereof, unless all the said Justices shall be in their Circuits, and then, as soon as any one of them shall be returned to his Chambers in one of the *Serjeants Inns*.

Books to be
kept.

Fourthly, Also every Commissioner is to have a Book kept purposely for entering the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-Piece, and the Time of taking thereof, and the Name of him by whom such Bail shall be transmitted; and also the Name of the Attorney for the Defendant. And,

Exception
against Bail.

Fifthly, It is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the End that they may inquire of the Sufficiency of them, and if they are found insufficient, they may except against them Twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney of the taking thereof; and in that case, the Defendant

Defendant must either put in better Bail, or the King's
 Cognizors of such Bails must (*) justify them. Bench.
 selves in open Court, either by Affidavit taken Justification
 before such Commissioner that took the said or new Bail.
 Bail, or by Oath made in Court, or before one * See before
 of the Judges of the said Court. for the Time
 of justifying or
 adding Bail.

G. Eyre. W. Dolbin. J. Holt.

King's
Bench.

*A Bail Piece upon a Capi-Corpus,
taken before Commissioners.*

The Term
the Writ is
returnable
of

— Term in the — Year of the
Reign of K. G. the 2d.

Berks, ff. **A.** B. of R. in the County afore-
said, Gent. is delivered to Bail
upon a Capi Corpus

Plead- } To C. D. of Gentleman,
well Ar- } and E. F. of Gent.
torney.

*At the Suit of
D. R.*

Double 12 d.
Stamp.

*Taken and ac-
knowledged 24th
Day of August
1732, before
me J. S. one
of the Com-
missioners.*

Special Bail-Pieces taken by Commissioners must be carried to be filed at the Judge's Chamber, with an Affidavit of the due taking to be made by one that was present. King's Bench.

The Form of an Affidavit of taking Bail.

In the King's Bench.

Between $\left\{ \begin{array}{l} \text{D. R. Plaintiff,} \\ \text{and} \\ \text{A. B. Defendant.} \end{array} \right.$

J. B. of ——— in the County of ——— Gent.
maketh Oath, That the Recognizance of
Bail, or Bail-piece hereto annexed, was duly ac-
knowledged by ——— (naming the Bail) before
J. S. Esq; the Commissioner, who took the same
in this Deponent's Presence the ——— Day of
——— last past,

Sworn at ——— the ———
——— Day of ——— 1740,
before

J. B.

This Affidavit may be sworn before the
Commissioner; and sent up, or if the Party be
above in Term, then before a Judge of that
Court.

King's
Bench.

Affidavit of Justification of Bail:

In the King's Bench.

Between { D. R. Plaintiff,
and
A. B. Defendant.

H. E. of ——— and J. D. of ——— the Defendant's Bail in this Cause severally make Oath, That they these Deponents are Housekeepers in ——— aforesaid, and each of them worth the Sum of ———, and upwards, exclusive of all Debts or Demands due from them to any Person or Persons whatsoever.

Sworn, &c.

H. E.
J. D.

Declarations.

Of Drawing
Declarations.

WHEN you have Bail, as is before observed, the next Thing, is to draw your Declaration, wherein in special Cases there is often great Difficulty; and it is a Fee very usefully bestowed to advise with able Counsel upon the Declaration.

Many Causes do miscarry, and many Delays and Charges happen by Demurrers, Arrests of Judgment and Writs of Error, for Want of good Advice on the Declaration at first, but Clerks (at least for some Time) are employed

only in the general and usual Forms of common Declarations, of which are many necessary Precedents herein inserted. King's Bench.

You write the Term and Year of the King on the Top of the Declaration, the County in the Margent, the Attorney's Name at the Bottom, (Pledges of prosecuting, &c.)

All Actions personal, where no Possession is awarded, are transitory and not local, as *Debt, Detinue, Annuity, Account, Case, &c.* Of laying the Venue in the Declarations.
and may be commenced and the Declaration laid in such County as the Plainriff pleases; but the Court, on Motion before the Rules to plead are out, will alter the *Venue*, Affidavit being made, that the Cause of Action arose in another County. In Transitory Actions.

Affidavit to change the Venue.

In the King's Bench.

Between { A. B. Plaintiff,
and
C. D. Defendant.

C. D. of — the Defendant in this Cause maketh Oath, that the Cause of Action mentioned in the Declaration delivered in this Cause (if any) did arise in the County of — and not in the County of — nor elsewhere out of the said County of —

Sworn, &c.

C. D.

F 3

Upon

King's
Bench.

Upon which Affidavit (and an Affidavit being made of Notice of Motion) the Court will grant a Rule, which you must get drawn up by Mr. Mundy, and serve a Copy on the Plaintiff's Attorney or Agent.

If an Attorney or other Officer of the Court be Plaintiff, and the Action be laid in *Middlesex*, the Court will not alter the *Venue*, and if such Persons be Defendants, and sued in any other County than *Middlesex*, the Court will alter the *Venue* to *Middlesex*, except such Persons sue or be sued in *Auter Droit*, or jointly with others, and then they lose their Privilege.

After the *Essoin-Day* of the subsequent Term after Appearance, the Plaintiff shall not alter his own *Venue*, tho' he would pay Costs, or give an *Imparlance*.

Local Actions. But all real and mixt Actions, as *Ejectment*, *Trespass Quare Clausum fregit*, *Waste*, &c. are local, and are to be laid in the County where the Cause of Action arose, or where the Lands lie.

Of laying the Day in the Declaration. In all Actions upon the *Case*, *Trespass*, *Assault*, *Battery*, &c. you are not obliged to lay the certain Day in your Declaration, but you may lay it at any Time after the Cause of Action accrewed, &c. before the *Essoin-Day* of that Term the Declaration is of.

But if the Cause of Action arose in that Term you declare of, as it may sometimes happen on a Promissory Note, &c. then you confine your Declaration to a certain Day, subsequent to the Cause of Action, by writing on the Top of your Declaration, *Monday next after fifteen Days from the Day of St. Martin in the Term*

of

Declarations.

71

of St. Michael in the Sixth Year of King George the Second.

King's Bench.

Upon the Appearance of the Defendant by his Attorney, the Plaintiff's Attorney is to deliver him a Copy of the Declaration, who must pay for the same after the Rate of 4 d. per Sheet Copywise, and for the Stamps thereon, (*per Reg' Cur' T. 12 W. 3.*) and likewise 4 d. for the Defendant's Warrant of Attorney (*per Reg' Cur' M. 5 Annæ*).

Of delivering Declaration when the Defendant appears.

And where the Defendant is arrested by Process, wherein the Cause of Action is specially set forth, or where a Copy of such Process is served on such Defendant, and the Plaintiff thereupon declares, the Defendant must not have an Imparance without Leave of the Court, but must plead within the Time allowed upon original Writs. *Reg' Cur' Hil. 2 G. 2.*

Of declaring on special Process.

And now upon all Process of this Court returnable the 1st or 2d Return of any Term, if the Plaintiff declares in *London* or *Middlesex*, and the Defendant lives within 20 Miles of *London*, the Declaration may be delivered with Notice to plead within four Days after the Delivery thereof, and the Defendant must plead within that Time without an Imparance. And if the Plaintiff declares in any other County, or the Defendant lives above 20 Miles from *London*, the Declaration to be delivered with Notice to plead within eight Days after the Delivery thereof, and the Defendant must plead within the said eight Days without an Imparance. *Reg' Cur' 5 & 6 G. 2.*

Of delivering Declarations when laid in London and Middlesex.

In other Counties.

And likewise upon all Process returnable the 1st or 2d Return of any Term, where no Affidavit is filed of the Cause of Action, the

Of delivering Declarations de bene esse.

King's
Bench.

Where no Af-
fidavit of
Debt is filed.

Where an Af-
fidavit is filed.

Declaration may be delivered *de bene esse* at the Return of the Process, with Notice to plead in eight Days from the Delivery thereof; and if the Defendant does not file Common Bail, and plead within the said eight Days, Judgment may be signed, a Rule being duly entered. And upon all Process returnable as aforesaid, where such Affidavit is filed, Declaration may be delivered *de bene esse*, at the Return of the Process, with Notice to plead within four Days after the Delivery thereof, if the Action be laid in *London* or *Middlesex*, and the Defendant lives within 20 Miles of *London*; and in eight Days if the Action be laid in any other County, or the Defendant lives above 20 Miles from *London*; and if the Defendant puts in Bail, and does not plead within such Times, Judgment may be signed, a Rule being duly entered. *Reg' Cur. Mic. 10 G. 2.*

Of delivering
Declaration by
the Bye.

When a Defendant is in the Custody of the Marshal, or has filed Common Bail, any Person may deliver or file a Declaration against him *by the Bye*, the same Term he was committed, or filed Bail; and in Case of Common Bail filed, the Declaration must be filed *sedente Curia*; for his being in Custody, or putting in Bail, suppose him always present in Court to answer any Person; so it is needless to take out any further Process to bring him in to answer, and such Declaration is good, altho' the Defendant be illegally in Custody. *Lilly's Pract' Reg' Tit. Declarations.*

But where the Plaintiff files Common Bail for the Defendant, pursuant to the Statute, no Person except such Plaintiff may deliver a Declaration by the Bye against such Defendant, by Reason

Reason of Common Bail being so filed. *Reg' King's
Cur' Mic. 10 G. 2. Bench.*

And in all Causes where a Copy of the Pro- *Of filing De-
cess is served on the Defendant, and Common claracion
Bail is filed by the Plaintiff for the Defendant, when Bail
Declaration must be left in the Office with the filed according
to the Statute.*
Clerk of the Declarations, and Notice thereof
given to the Defendant, or left at his last or
most usual Place of Abode; in which Notice
must be expressed the Nature of the Action, at
whose Suit prosecuted, and the Time limited
by the Rules for the Defendant to plead there-
to; and from the Time of giving such Notice
Declaration is deemed well delivered. *Reg' Cur'
Trin. 1 G. 2.*

The Form of a Notice of Decla- Notice of it. ration being filed.

Mr. C. D.

Take Notice that a Declaration is filed
against you *, as of this present Michael- * If de bene
mas Term in the King's Bench Office in the In- esse say so.
ner Temple, London, at the Suit of A. B. in an
Action † of Trespass on the Case for (Goods sold, † Of Trespass
Money lent, &c. as the Case is): And unless and Assault.
you plead to the said Declaration in — Days Of Debt, &c.
from the Date hereof, Judgment will be signed
against you by Default, dated this — Day of
November 1740.

Yours,

J. P. Attorney for the Plaintiff.
If

King's
Bench.
Of filing De-
claration, on
Refusal to pay
for it.

If the Defendant's Attorney (or his Clerk in his Absence) refuses to pay for a Copy of the Declaration, Duty, and Warrant; or if his Place of Abode be unknown to the Plaintiff's Attorney, the Declaration may be left in the Office with the Clerk of the Declarations, and then Notice thereof must be given to the Defendant or his Attorney, and from the Time of such Notice Declaration is deemed well delivered. And before any Plea must be received, the Defendant's Attorney must take the Declaration out of the Office, and pay for the same, and for want of a Plea (a Rule being given) and the Time expired, Judgment may be signed. *Reg' Cur' Trin. 12 W. 3. & Trin. 2 G. 2.*

If the Plaintiff's Attorney does not deliver a Declaration to the Defendant or his Attorney, either the Term the Writ is returnable of, or before the Rising of the Court the last Day of the succeeding Term, the Action is discharged, and the Plaintiff may be non-pross'd; for the Defendant is not obliged afterwards to accept a Declaration.

It was the antient Practice to write the Declaration on Parchment, and File it in the Office, for which they paid 4*d.* but now that is not done, except against Attornies and Prisoners, and when Writs of Error are brought, and the Declaration must be filed on Writs of Error the same Term it is of.

Before you sign Judgment, remember to give a Rule to the Clerk of the Rules, which will be out in four Days. You pay for it 1*s.* 4*d.*

You must also remember to call on the Defendant's Attorney for a Plea, before the Rules for Pleading are out, and it is an usual and good
Way

Declarations.

75

Way to demand such Plea by a Note in writing, King's
in this Manner: Bench,

Mr. C.

A. against B.

The Plaintiff demands a Plea, or Judgment.

Yours,

F. Attorney for the Plaintiff.

Jan. 2d. 1731.

You may search the Clerk of the Papers Plea Books the fourth or fifth Day of the Term, to see whether the Defendant hath not put in a special Plea, as in Abatement or in Bar, &c. that you may lose no Time, and for general Pleas, you search the Office Book with Mr. Lantrow.

A Declaration upon a Bond.

Anthony Of the Term of St. Michael in the
and 14th Year of the Reign of King
Bigge. George the Second.

Middlesex, ss.

A. B. complains of C. D. * otherwise called C. D. * Note, the
of the Parish of St. Clement Danes in the Coun- Alias Dist^r
ty of Middlesex, Gentleman, in Custody of the ought to be
† Marshal, &c. of a Plea that he render to him Literatim as
100l. of lawful Money of Great Britain which in the Bond.
he owes to him, and unjustly detains, for that, to † Or in the
wit, that **Whereas** the aforesaid C. on the Custody of
first Day of June in the 14th Year of the Reign of the Sheriff
of the Coun-
ty of S. &c.

Declarations.

King's
Bench.

of the Lord George the Second, now King of Great Britain, &c. at the aforesaid Parish of St. Clement Danes in the County aforesaid, by his certain Writing obligatory, sealed with the Seal of the said C. and now here shewn to the Court of the said Lord the King, the Date whereof is the Day and Year aforesaid, acknowledged himself to be held and firmly bound to the aforesaid A. in the aforesaid 100 l. to be paid to the same A. when he should be thereto required; But the aforesaid C. altho' often requested, &c. the aforesaid 100 l. to the aforesaid A. hath not yet paid, but to pay him the same he hath hitherto altogether denied (refused), and still doth deny (refuse); wherefore the aforesaid C. says that he is worse (injured) and has received Damage (or is damnified) to the Value of twenty Pounds, and thereof he brings Suit, &c.

Somerwell, for the Plaintiff.	} Pledges of Prosecuting	} Jo. Doe, and R. Roe.
Weldon, for the Defendant.		

Note; If you declare on the Sheriff's Bond not assigned, then say, *Acknowledged himself to be held, (&c.) to A. B. then being Sheriff of the County aforesaid: by the Name of A. B. Esq; Sheriff of the County of M. aforesaid, But if the Bond be assigned according to the late Act, you declare as Assignee of the Sheriff in the manner following.*

A De-

King's
Bench.

A Declaration upon the Assignment of the Sheriff's *Bail-Bond* to the Plaintiff, according to the *Statute 4 & 5. Anne*, for the Amendment of the Law.

London, ff. **A.** B. Gentleman, Assignee of C. D. Knight, (late) Sheriff of D. according to the Form of the Statute in such Case made and provided, complains of E. F. otherwise called, (&c. as in the Bond) in the Custody of the Marshal, &c. of a Plea, that he render to him 100 l. of lawful Money of Great Britain, which he owes to him, and unjustly detains, for that to wit, that **whereas** the aforesaid A. after the first Day of the Term of the Holy Trinity in the Year of our Lord 1706, to wit, the 20th Day of June in the Year of our Lord 1732, had prosecuted (sued) out of the Court of the said Lord the King, before the King himself, (the same Court then being at Westminster in the County of Middlesex,) against the aforesaid E. a certain Writ of the said Lord the King, called a Latitat, directed to the (then) Sheriff of the County of D. aforesaid; by which said Writ, the said Lord the King commanded the same Sheriff, that he should take the aforesaid A. if he was to be found in his Bailiwick, and him safely should keep, so that he might have his Body before the said Lord the King at Westminster, on — next after — then next following, to answer unto the aforesaid A. B. of a Plea of Trespass, and also of a Bill of the said

Latitat sued
out.

The Return
of the Latit-
tat.

A.

Declarations in Debt.

King's
Bench.

Delivery of
the Writ to
the Sheriff.

Arrest.

Bail-Bond.

The Date of
it.

Profert in
Cur' the
Bail-Bond.

A. against the said E. for Fifty Pounds Debt, according to the Custom of the Court of the said Lord the King, before the King himself to be exhibited. Which said Writ afterwards, and before the Return of the same, to wit, (such a Day) in the Year of our Lord 1732 abovesaid, was delivered to the aforesaid C. D. Knight, (then) Sheriff of the County of D. aforesaid, at G. in the County of D. aforesaid, in Form of Law to be executed. By Virtue of which said Writ afterwards, and before the Return thereof, at G. aforesaid, the said C. D. (at that Time being Sheriff of the County of D. aforesaid) took and arrested the said E. and him the said E. in his Custody then and there on the Occasion aforesaid had and detained. And the said E. being arrested and in Custody as aforesaid, the said Sheriff afterwards, to wit, the same (such a Day) in the Year 1732 abovesaid, took Bail for the Appearance of the said E. at the Return of the said Writ, (to wit) the aforesaid E. together with one H. J. of K. in the County of D. Yeoman, and L. M. of K. aforesaid, Yeoman, and afterwards, to wit, on the Day and Year last abovesaid, at London aforesaid, to wit, in the Parish of the Blessed Mary of the Arches in the Ward of Cheap, by their certain Writing obligatory, sealed with the Seals of them the said E. H. and L. and now shewn here to the Court of the Lord the King, the Date whereof is the same Day and Year last abovesaid, acknowledged themselves and each of them to be held and firmly bound to the aforesaid C. D. (by the Name of C. D. Knight, Sheriff of the County of D. aforesaid,) in the aforesaid 100 l. to be paid to the same Sheriff, or his Assigns, when they or

eit her

Declarations in Debt.

79

either of them should be thereto required, with a King's Bench.
 Condition to the same Writing Obligatory under-The Condi-
 written, that if the aforesaid E. should appear tion of the
 before the said Lord the King at Westminster Bail Bond.
 on Wednesday next after fifteen Days of St.
 Martin then next following, to Answer to the
 aforesaid A. B. Gentleman of a Plea of Tres-
 pass, and also to the Bill of the said A. a-
 gainst the said E. for fifty Pounds Debt ac-
 cording to the Custom of the Court of the
 Lord the King, before the King himself to
 be exhibited; that then the said Obligation
 should be void, and of none Effect, other-
 wise it should remain in its full Force and
 Virtue, as by the said Writing obligatory,
 and Condition thereto, more fully appears.
And the same A. farther saith that the afore-That Defen-
 said E. did not appear before the Lord the King dant did not
 at Westminster on Wednesday next after fifteen appear.
 Days (from the Day) of St. Martin aforesaid,
 according to the Command of the said Writ,
 and the Form and Effect of the said Condition,
 by which the said Writing Obligatory became
 forfeited to the same Sheriff; **And** the same The Date of
 Sheriff afterwards, to wit, (such a Day) in the the Assign-
 Year 1732 abovesaid, at L. aforesaid, to wit, ment.
 in the Parish of the Blessed Mary of the Arches
 in the Ward of Cheap aforesaid, at the Re-
 quest and Charges of the said A. by a certain
 Indorsement in Writing upon the said Writing
 Obligatory, bearing Date the Day and Year last
 abovesaid, under the Hand and Seal of the
 said C. D. in the Presence of two Credible Wit-
 nesses, to wit, (the Names of the Witnesses)
 and by them then and there attested, according
 to the Form and Effect of the Statute afore-
 said

Declarations in Debt.

King's
Bench.

Profert in
Cur' of As-
signment.

said, assigned to the same A. the aforesaid Writing Obligatory, which said Indorsement be the said A. brings here into Court, the Date whereof is the same Day and Year last abovesaid; By Reason of which said Premisses, and by Force of the Statute in that Case made and provided, an Action hath accrued to the same A. as Assignee of the aforesaid C. D. (then) Sheriff of the County of D. aforesaid, to require and have of the aforesaid E. the aforesaid 100 l. Yet the aforesaid E. (altho' often requested) hath not paid (rendred) the said 100 l. to the said C. D. before the Assignment as aforesaid made, or to the said A. at any time since, or to either of them, but that to them hitherto to pay hath wholly refused, and to the same A. still refuses, to the Damage of the said A. 20 l. and therefore he brings this Suit, &c.

P. For the Plaintiff }
Q. For the Defendant } Pledges, &c.

If against any of the Sureties of E. F.
then thus.

London, ss. **A.** B. Assignee of C. D. Esq;
(late) Sheriff of the County
of D. according to the Form of the Statute in the
like Case lately made and provided, Complains
of H. J. otherwise called, &c. in Custody of the
Marshal, &c. (as before, to the taking of Bail)
took Bail for the Appearance of the said E. F. to
wit, the said E. F. the aforesaid H. J. and one
L. M. afterwards, to wit, on the Day and Year
last

last abovesaid at, &c. (as before, setting forth, King's that the Principal did not appear, and that Bench. the Bond became forfeited and assigned, &c. by which the Action accrued to the Plaintiff, against the Defendant, &c. as in the other.)

Upon a Bill Penal.

London, ss. **A** B. complains of C. D. otherwise called, (&c.) in the Custody of the Marshal, &c. of a Plea, that he render to him Twenty Pounds of lawful Money of Great Britain, which he owes to him and unjustly detains, for that, to wit, that **whereas** the aforesaid C. (such a Day and Year) at London, to wit, in the Parish of the Blessed Mary of the Arches in the Ward of Cheap, by his Bill obligatory, Sealed with the Seal of the said C. and to the Court of the said Lord the King now here shewn, the Date whereof is the same Day and Year abovesaid, acknowledged himself to owe to the aforesaid A. Ten Pounds, to be paid to the same A. in and upon the first Day of May then next following after the Date of the same Bill; and for the Payment thereof, well and truly to be made, the same C. hath bound himself, his Heirs, Executors and Administrators in the aforesaid Twenty Pounds, firmly by the said Bill; and the aforesaid A. avers, that the aforesaid C. hath not paid to the same A. the aforesaid Ten Pounds in and upon the aforesaid first Day of May, which he ought to have paid to him in and upon the same Day, according to the Force and Effect of the Bill aforesaid, by which an Action hath accrewed to the same

G

A.

King's
Bench.

A. to demand and have of the aforesaid C. the aforesaid Twenty Pounds ; yet the aforesaid C. altho' often requested, the aforesaid twenty Pounds to the aforesaid A. hath not yet paid, but to pay him the same hath hitherto altogether refused, and still doth refuse, to the Damage of the said A. twenty Pounds ; and thereupon he brings his Suit, &c.

If it be upon a Bill without Penalty, then say (as last before unto) at London, to wit, in the Parish, (&c.) by his certain writing obligatory, Sealed with the Seal of the said C. and to the Court of the said Lord the King now here shewn, the Date whereof is the Day and Year abovesaid, hath acknowledged himself to owe to the aforesaid A. the aforesaid twenty Pounds, to be paid to the same A. his Executors, Administrators or Assignees, at or upon the first Day of May then next following the Date of the Bill obligatory aforesaid, and for the Payment of the same well and truly to be made, the aforesaid C. bound himself, his Heirs, Executors and Administrators firmly by the same Bill ; Yet the aforesaid C. altho' (often required) hath not yet paid the aforesaid twenty Pounds to the said A. &c. as above.

If you bring your Action against two or more for one Debt due on the same Specialty, you must observe whether the Specialty be joint or severall, if joint then your Declaration must be, that they render jointly to the Plaintiff so much Money, &c. but if the Specialty be as is most usual, jointly and severally, as we bind us, our Heirs, Executors and Administrators, and every of us ; then you must

deliver so many several Declarations, as there King's
are Defendants in the Writ, otherwise it is Bench.
pleadable in Abatement.

Declaration for Goods sold and delivered.

Middlesex, ff. **A.** B. complains of C. D. in You may lay
Custody of the Marshal, &c. it any time
for that, to wit, that **whereas** the aforesaid after the
C. the Tenth Day of October in the Year of Cause of A-
our Lord one Thousand seven Hundred and ction, and
Thirty-nine, at the Parish of St. Clement Danes before the
in the County of Middlesex, was indebted to Effoin-Day
the said A. in seventeen Pounds of lawful Mo- of the Term
ney of Great Britain, for divers Goods, Wares the Declara-
and Merchandizes, of the said A. by him the tion is of.
said A. to the said C. at his special Instance
and Request, before that time sold and delivered.
And the said C. being so indebted, afterwards, to Indebitatus
wit, the same Day and Year abovesaid, at the assumpsit for
Parish aforesaid in the County aforesaid, in the Goods
consideration thereof, undertook and to the said sold and de-
A. then and there faithfully promised, that he livered.
the said C. would well and truly pay and satisfy
to the said A. the aforesaid seventeen Pounds,
when he should be afterwards thereto required.
And also whereas the said C. D. after-
wards, to wit, the same Day and Year abovesaid,
at the Parish aforesaid in the County aforesaid,
in Consideration that the aforesaid A. at the
like special Instance and Request of the said C Quantum
had sold and delivered to the said C. diverse Valebant for
other Goods, Wares and Merchandizes of him other Goods
the said A. undertook, and to the said A. then sold.

King's.
Bench

and there faithfully promised, that he the aforesaid C. would well and truly pay and satisfy to him the said A. as much Money as the Goods, Wares, and Merchandizes last mentioned, at the time of the Sale and Delivery of the same were reasonably worth, when he should be afterwards thereto required; And the aforesaid A. avers, that the Goods, Wares and Merchandizes last mentioned, at the time of the Sale and Delivery of the same were reasonably worth another Sum of seventeen Pounds of like lawful Money of Great Britain, to wit, at the Parish aforesaid in the County aforesaid; whereof the said C. afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, had Notice: **And also whereas** the said C. afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, had accounted together with the said A. of and concerning diverse Sums of Money before that Time due and owing from the said C. to the said A. and upon that Account the said C. was then and there found in Arrear towards the said A. in another Sum of seventeen Pounds of like lawful Money of Great Britain; and so being so found in Arrear, the aforesaid C. in Consideration thereof, afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, took upon himself, and to the said A. then and there faithfully promised, that he the aforesaid C. would well and faithfully pay and satisfy the said seventeen Pounds last mentioned to the said A. when he should be afterwards thereto required: **Nevertheless** the said C. not regarding his several Promises and Undertakings aforesaid,

Insimul Computasset for
Money due
on Account.

Breach.

in

Declarations in Case.

85

in Form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said A. in the Behalf, hath not paid the said several Sums of Money, or any Part thereof, to the said A. nor for the same hath any way satisfied him, altho' the aforesaid C. afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, and often afterwards, by the said A. has been thereto required, but to pay or satisfy him for the same he hath absolutely refused and still refuses; wherefore the said A. saith that he is injured and damnified to the Value of seventeen Pounds; and therefore he brings Suit, &c.

King's
Bench.

F. For the Plaintiff. }
G. For the Defendant, } Pledges, &c.

Declaration for Money laid out, Money lent, and Money had and received.

Anthony Of the Term of St. Michael
and in the Fourteenth Year of the
Bigge. Reign of K. Geo. 2.

Middlesex, to wit, **A.** B. complains of C. D. *in the Custody of the Marshal, &c. for that, to wit, that whereas the said C. the tenth Day of January in the Year of our Lord one Thousand seven Hundred and Thirty-nine, at the Parish of St. Clement Danes in the County of Middlesex, was indebted to the said A. in Ten Pounds of lawful Money laid out.*

King's
Bench.

Money of Great Britain, for the like Sum of Money by him the said A. for the said C. at his special Instance and Request before that Time paid, laid out, and expended; And being so indebted, the aforesaid C. in Consideration thereof, afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, undertook, and to the said A. then and there faithfully promised, that he the aforesaid C. would well and truly pay and satisfy to the said A. the aforesaid Ten Pounds, when he should be afterwards thereto requested; **And also whereas** the said C. afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, was indebted to the said A. in other Ten Pounds of like lawful Money of Great Britain, for the like Sum of Money, by the aforesaid A. to the said C. at his special Instance and Request, before that Time lent and advanced; And being so indebted, the said C. in Consideration thereof, afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, took upon himself, and to the said A. then and there faithfully promised, that he the said C. would well and truly pay and content to the same A. the aforesaid Ten Pounds last mentioned, when he should be afterwards there-
to required: **And also whereas** the said C. afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, was indebted to the said A. in other Ten Pounds of like lawful Money, for the like Sum of Money of the said A. and for his Use by the aforesaid C. before that Time had and received; And being so indebted, the aforesaid C.

The like for
Money lent.

The like for
Money had
and received
for the use of
the Plaintiff.

in Consideration thereof, afterwards, to wit, the King's Bench.
 same Day and Year aforesaid, at the Parish
 aforesaid in the County aforesaid took upon him-
 self, and then there faithfully promised to the
 said A. that he the aforesaid C. would well
 and faithfully pay and satisfy the aforesaid
 Sum of Ten Pounds last mentioned to the said A.
 when he should be thereto afterwards required;
Pct the aforesaid A. not regarding his se-
 veral Promises and Undertakings aforesaid in
 Form aforesaid made, but contriving and frau-
 dulently, (&c. as before.)

Declaration for Work done, and Mate- rials found and provided.

Anthony Of the Term of the Holy Tri-
 and nity in the Thirteenth and
 Bigge. Fourteenth Years of King
 George the 2d.

Middlesex, to wit, **A.** B. complains of C. D.
 in the Custody of the
 Marshal, &c. for that, to wit, that **Whereas**
 the said C. on the first Day of January in the
 Year of our Lord one Thousand seven Hundred
 and Thirty-nine, at the Parish of St. Clement
 Danes in the County of Middlesex, was in-
 debted to the said A. in Twenty-five Pounds of
 lawful Money of Great Britain, as well for the Indebitatus
 Work and Labour of the said A. by him the Assumpsit for
 said A. for the said C. at his special Instance Work done
 and Request, before that Time done and per- and Materi-
 formed, as for diverse Materials and Things als found and
 necessary of the said A. by him the said A. for provided.
 G 4 the

King's
Bench.

Quantum
meruit for
other Work
done and
other Mate-
rials found.

the aforesaid C. at his like Special Instance and Request, before that Time in and about the said Work and Labour found, provided and used. And the aforesaid C. being so indebted, in Consideration thereof, afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, took upon himself, and to the said A. then and there faithfully promised, that he the said C. the aforesaid Twenty-five Pounds to the said A. when he should be afterwards thereto required, would well and truly pay and satisfy. And also whereas the said C. afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, in Consideration that the said A. at the like Special Instance and Request of him the said C. had before that Time done and performed for the said C. other Work and Labour, and had found, provided and used for the same C. diverse other Materials and Things necessary in and about the said Work and Labour last mentioned, took upon himself, and then and there faithfully promised to the same A. that he the aforesaid C. would well and truly pay and satisfy to the said A. as well as much Money, as he the said A. for the said Work and Labour last mentioned, as aforesaid, done and performed, as also for these Materials and Things necessary last mentioned, as aforesaid, in and about the Work and Labour last mentioned found, provided and used, as he the said A. reasonably deserved to have, when he should be afterwards thereto required. And the aforesaid A. avers that for the Work and Labour last mentioned, as aforesaid, done and performed, and for the Materials and Things necessary in and about the

said

said Work and Labour last mentioned, as afore- King's
said, found, provided and used, he reasonably Bench.
deserved to have of the said C. another Sum of
Twenty-five Pounds of like lawful Money of
Great Britain, to wit, at the Parish aforesaid
in the County aforesaid, whereof the said C.
afterwards, to wit, the same Day and Year a-
bovesaid, at the Parish aforesaid in the County
aforesaid, had Notice; **But** the aforesaid C.
(as before.)

—— For the Plaintiff. }
—— For the Defendant. } Pledges.

Somerfet, ff. **A** B. complains of C. D. in Quantum
the Custody of the Marshal, meruit for
&c. for that, to wit, that **whereas** the said the Cure of
A. (such a Day and Year) at E. in the County a Wound.
aforesaid, at the special Instance and Request of
the said C. had cured the said C. of a certain
Wound then being in his Head, took upon him-
self and then and there faithfully promised to
the said A. that he the said C. would well and
truly pay and satisfy to the said A. such a Sum
of Money as he reasonably deserved for the Cure
of the Wound aforesaid, when he should be after-
wards thereto required. And the aforesaid A.
avers that he giving credit to the Promises and Averment.
Undertakings of the aforesaid C. in Form
aforesaid made, afterwards, to wit, ——
(such a Day and Year) at E. in the County of
S. aforesaid, cured the aforesaid C. of the
Wound aforesaid, and for that Cure reasonably
deserved five Pounds of lawful Money of Great
Britain, whereof the said C. from the said A.
then and there had Notice.

After

King's
Bench

After this you may add an *Indebitatus assumpsit* for Medicines, &c. thus.

Indebitatus
Assumpsit.

And also whereas the said C. afterwards, to wit, the same Day and Year abovesaid at E. abovesaid in the County abovesaid, was indebted to the said A. in other five Pounds of like lawful Money, for divers, Medicines, Plaisters, Ointments, and other Wares to the same C. by the abovesaid A. before that Time sold and delivered. And the said C. being so indebted, in Consideration thereof, afterwards, to wit, the same Day and Year last abovesaid, at E. abovesaid took upon himself, and then and there faithfully promised the same A. &c. (as in the Declaration next before.) and so may lay a *Quantum valent* for diverse Medicines, (&c.) sold and delivered, Undertook, and to the said A. then and there faithfully promised that he the said C. would well and truly pay and satisfy to the same C. as much Money as the said Medicines, Plaisters, Ointments and other Wares at the Time of the Sale and Delivery of the same were reasonably worth, when he should be afterwards thereto required. And the same A. avers that the said Medicines, Plaisters, Ointments, and other Wares, at the Time of the Sale and Delivery of the same were reasonably worth other five Pounds of lawful Money of Great Britain, to wit, at E. abovesaid in the County abovesaid, whereof the said C. afterwards, to wit, the Day, Year and Place abovesaid had Notice. (You may also inforce this by laying it over again thus,) **And also whereas** the said A. afterwards, to wit, the same Day and Year last abovesaid, at E. abovesaid in the County abovesaid, at
the

Quantum
Valent.

Averment.

For other
Medicines.

the Special Instance and Request of the said C. King's Bench.
had sold and delivered to the aforesaid C. diverse other Medicines, Plaisters, Ointments and Wares, &c. (as before unto) had Notice, (but this seems rather to be to enlarge the Declaration than for Necessity.) Nevertheless the said C. not regarding his several Promises and Undertakings aforesaid, but contriving and fraudulently intending, &c. (as before.)

Here also may be joined a *Mutuatus* for other Money, if need be.

Declaration on a Promissory Note, payable on Demand.

Anthony Of the Term of St. Mic. in the
and 14th Year of King George
Bigge. the 2d.

Middlesex, to wit, **A.** B. complains of C. D.
in the Custody of the
Marshal, &c. for that, to wit, that whereas
the aforesaid C. after the first Day of May in
the Year of our Lord one Thousand seven
Hundred and Five, to wit, the Twenty-first
Day of December in the Year of our Lord
one Thousand seven Hundred and Thirty-nine,
at the Parish of St. Clement Danes in the
County aforesaid, made his certain Note in
Writing, commonly called a promissory Note,
with his proper Hand thereunto subscribed,
bearing Date the Day and Year last aforesaid,
and the same Note to the aforesaid A. did then
and there deliver, by which said Note the said
C. promised to pay to the said A. by the Name
of

The Date of
the Note.

King's
Bench,

of Mr. *A. B.* or his Order, on Demand, the Sum of Thirty and Eight Pounds for Value received, by Reason of which said Premisses, and also by Force of the Statute in such Case made and provided, the said *C.* became liable to pay to the same *A.* or his Order, the aforesaid Thirty and Eight Pounds upon Demand, according to the Tenor of the aforesaid Note. And the aforesaid *C.* being so liable in Consideration thereof, afterwards, to wit, the same Day and Year last aforesaid, at the Parish aforesaid in the County aforesaid, took upon himself, and to the said *C.* then and there faithfully promised, that he the aforesaid *C.* the aforesaid thirty and eight Pounds, would well and truly Pay and satisfy to the said *A.* when he should be afterwards thereto requested. And the aforesaid *A.* avers, that he hath not at any Time since the making of the said Note made any Order of or concerning the Payment of the Sum of Money aforesaid, in the Note aforesaid contained, or of or concerning the Payment of any Part thereof: * Nevertheless the aforesaid (*as before*).

* It is usual to add an *Indebitat. assumpsit* for Money had and received. — and an *Indebitat. assumpsit* for Money laid out.

sumpsit for Money had and received. — and an *Indebitat. assumpsit* for Money laid out.

Easter the Fifth of King George II.

A Declaration on a Promissory Note indorsed to a third Person on the Stat. *Middlesex, to wit, J. C.* complains of *G. H.* in *J. Custody of the Marshal, &c.* for that, to wit, that whereas the said *G.* after the first Day of May in the Year of our Lord one Thousand seven Hundred and Five,

Five, to wit, on the Twenty-seventh Day of *King's*
December in the Year of our Lord one Thou- *Bench.*
 sand seven Hundred and Thirty-one, at the Pa-
 rish of *St. Clement Danes* in the County of
Middlesex, made his certain Note in Writing,
 called a Promissory Note, with his own proper
 Hand thereto subscribed, bearing Date the Day
 and Year last abovesaid; and then and there
 delivered the same Note to one *E. B.* by which
 said Note the aforesaid *G.* promised to pay to
 the aforesaid *E. B.* (by the Name of Mr. *E. B.*)
 or to his Order, the Sum of Six Pounds within
 two Months after the Date of the same Note,
 for Value received, as by the same Note mani-
 festly appears; and the aforesaid Sum of Money,
 mentioned in the aforesaid Note, or any part
 thereof, not being paid or satisfied to the said
E. B. he the said *E. B.* afterwards, to wit, the
 same Twenty-seventh Day of *December* in the
 Year of our Lord one Thousand seven Hundred
 and Thirty-one abovesaid, at the Parish aforesaid
 in the County aforesaid, by a certain Indorse-
 ment in Writing, then and there made on the
 said Note, and then and there subscribed with
 the proper Hand of the said *E. B.* assigned the
 aforesaid Note to the before said *J.* and by the
 same Indorsement ordered and appointed the
 aforesaid *G.* to pay to the same *J.* the aforesaid
 Sum of Money in that Note specified, accord-
 ing to the Form and Effect of the same Note,
 and the Indorsement thereon so as aforesaid
 made; whereof the aforesaid *G.* afterwards, to
 wit, the Day and Year last abovesaid, at the
 Parish aforesaid in the County aforesaid, had
 Notice. By Reason of which said Premisses,
 and also by Force of the Statute in such Case
 made

Declarations in Case.

made and provided, the said *G.* became chargeable (liable) to pay to the aforesaid *J.* the same Sum of Money mentioned in the aforesaid Note, according to the Form and Effect of the same Note, and the Indorsement thereon made; and the same *G.* being so liable, in Consideration thereof, afterwards, to wit, the same Day and Year last aforesaid, at the Parish aforesaid in the County aforesaid, assumed upon himself, and to the same *J.* then and there faithfully promised, that he the aforesaid *G.* would well and faithfully pay and satisfy to the same *J.* the aforesaid Six Pounds last mentioned, when he should be thereunto afterwards required; **But** the aforesaid *G.* in no wise regarding his several Promises and Assumptions (Undertakings) aforesaid in the Form aforesaid made, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *J.* in this Behalf hath not yet paid the aforesaid several Sums of Money, or any Part thereof, to the said *J.* nor any wise satisfied him for the same; (altho' to do this the aforesaid *G.* afterwards, to wit, the Twenty-eighth Day of *February* in the Year of our Lord one Thousand seven Hundred and Thirty nine aforesaid, and oftentimes afterwards, at the Parish aforesaid in the County aforesaid, was requested by the aforesaid *J.*) but hitherto hath wholly refused, and still doth refuse, to pay or satisfy him for the same, to the Damage of the said *A.* of Twenty Pounds; and therefore he brings this Suit, &c.

The Intent of laying these Declarations so many different Ways with a *Quoque etiam*, (and also

also whereas) is that upon the Trial the Plaintiff may rely upon that Count which his Witnesses are best able to prove; for if any one of the Counts laid in the Declaration be proved, it is sufficient for him to recover *pro tanto*.

King's
Bench.

And one may join several Causes or Wrongs in one Action or Declaration, so they be of one Nature and against one Person; so one Action of the Case for divers Promises; but Debt and Trespass, and Wrongs cannot be joined together in one Action, though against one and the same Person.

Upon the *Indebitatus Assumpsit* for Goods sold and delivered, it is requisite the Plaintiff should prove more than one particular Thing sold, and also to prove a Price agreed upon, otherwise the Action will not lie; but on a *Quantum meruit*, you need only prove the Delivery of your Goods and their Value at the Time of their Delivery; therefore in an Action for Goods sold or Work done, it is most secure to lay a *Quantum meruit* with an *Indebitatus Assumpsit*; but if only one particular Commodity is sold, you must mention that Commodity particularly in the Declaration, and not say, Goods sold upon an *Insimul computassent*; you must lay in your Declaration the very Day of the Account, and the very Sum agreed upon by both Parties to be due, otherwise the Plaintiff will be nonsuited.

Kings'
Bench.

Trover.

Somerset, to wit. **A.** *B.* Complains of *C. D.* in the Custody of the Marshal, &c. for that, to wit, that **Whereas** the aforesaid *A.* the tenth Day of *May* in the sixth Year of the Reign of King *George* the Second, at *L.* in the County aforesaid, was possessed of the Goods and Chattels following, to wit, of one Feather-Bed, (*Naming the Goods*) of the Value of forty Pounds, as of his own proper Goods and Chattels, and being so thereof possessed, afterwards, to wit, the same Day and Year abovesaid, at *L.* aforesaid in the County aforesaid, the Goods and Chattels aforesaid out of his Hands and Possession he casually lost; which said Goods and Chattels afterwards, to wit, the same Day and Year abovesaid, at *L.* aforesaid in the County aforesaid, came to the Hands and Possession of the said *C.* by his finding the same. **Nevertheless** the said *C.* knowing the Goods and Chattels aforesaid to be the Goods and Chattels of the said *A.* and to him *A.* of Right to belong and appertain, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *A.* in this Respect, hath not yet delivered to him the said *A.* the Goods and Chattels aforesaid, (tho' often requested), but the Goods and Chattels aforesaid afterwards, to wit, on the Sixteenth Day of *May* in the Sixth Year abovesaid, at *L.* aforesaid in the County aforesaid converted and disposed of to his

Though you cannot prove an actual Conversion, yet a Demand and Refusal to deliver the Goods demanded is a sufficient Evidence of a Conversion.

Declaration in Trespass.

97

his own proper Use. Whereupon the same *A.* King's Bench. saith, that he is injured, and hath sustained Damage to the Value of Sixty Pounds; and therefore he brings Suit, &c.

Trover and Trespass cannot be brought in one Declaration, neither can Trover and Assumpsit.

Trespass.

Declaration in Trespass for breaking a Close, eating up and treading down Grass, with a Continuando.

Somerset, to wit. *A.* *B.* complains of *C. D.* in the Custody of the Marshal, &c. for that he the said *C.* the first Day of May in the Sixth Year of the Reign of the Lord George, now King of Great Britain, &c. with Force and Arms, &c. the Close of the said *A.* called *Whiteacre*, at *E.* in the County aforesaid, he broke and entred, and the Grass of the said *A.* to the Value of one Hundred Shillings, lately growing there, with certain Cattle, to wit, Horses, Cows, Hogs and Sheep, eat up, trod down and consumed, (and continued the said Trespass at diverse Days and Times, in so eating up, treading down and consuming the Grass of the said *A.* there growing, to wit, from the said first Day of May in the Year aforesaid, until the first Day of September then next following), and other Enormities to him then and there did, to the great Damage of the said *A.* and against the Peace of

H the

Declarations in Assault, &c.

the said Lord the King; whereupon the said *A.* saith that he is injured, and hath sustained Damage to the Value of forty Pounds; and therefore he brings his Suit, &c.

In Assault and Battery.

Somerſet, to wit. **A.** *B.* complains of *C. D.* in the Custody of the Marshal, &c. for that he the said *C.* the first Day of *May* in the Sixth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. with Force and Arms, to wit, with Swords, Staves and Knives, made and Assault upon him the said *A.* at *E.* in the County aforesaid, and him did then and there beat, wound and evilly treat, so that his Life was greatly despaired of, and other Enormities to him then and there did, against the Peace of the said Lord the King; whereupon the said *A.* saith that he is injured, and hath received Damage to the Value of twenty Pounds; and therefore he brings Suit, &c.

In Assault, Battery, and Imprisonment.

—— Made an Assault upon the said *A.* and him did beat, wound, imprison and evilly treat, and the said *A.* in Prison without any reasonable Cause, against the Will of the said *A.* and against the Law and Custom of this Kingdom (of *England*) for a long Time, to wit, for the
I
Space

Space of two Days, continued and kept, and King's other Enormities to him then and there did, Bench. against the Peace of the said Lord the now King; wherefore the said *A.* saith that he is injured, and damnified to the Value of forty Pounds; and therefore he brings this Suit, &c.

Declaration for a violent Assault and Battery.

Kent, to wit. **A.** *B.* complains of *C. D.* in Custody of the Marshal, &c. for that, that he (*such a Day and Year*) with Force and Arms, to wit, with Swords, Daggers, Staves, Clubs and Knives, &c. upon the same *A.* at &c. in the County aforesaid, made an Assault, and him the said *A.* did then and there beat, wound, and evilly treat, and struck one Blow so violently on the Head of the said *A.* that the said *A.* by the Force of that Stroke fell to the Ground, and the said *C.* him the said *A.* so lying on the Ground, did with many Strokes beat with his Fists and kick with his Feet on the said *A.*'s Face, Belly and Sides, so that the said *A.* lay as one dead, and by Reason of the said Strokes for a great while, to wit, for the Space of three Months then next following, was dangerously ill, and continued in great Danger of the Loss of his Life, and other Enormities to the said *A.* he the said *C.* then and there did, against the Peace of the Lord the King, to the Damage of the said *A.* one hundred Pounds, &c.

See more Forms of Declarations under Tit. *Replevin, Ejectment, &c.* and at the End of this Volume, and likewise in the 2d Volume.

Admission of a Guardian.

When you admit a Guardian for an Infant before a Judge, to prosecute and defend, do in this Manner.

Take a Piece of Parchment like a Bail-Piece, then write thus.

You must carry this to the Clerk of the Rules, and file and enter it with him, for it is no Record until you have done so, and the Clerk of the Rules will draw you a Rule upon this Admission.

Somersetshire, to wit.

I. *B. who is under the Age of Twenty-one Years, is admitted by the Court of the Lord the King, before the King Himself, to prosecute and defend by J.S. Gent. his Guardian, all and all Manner of Actions and Suits in the same Court depending at the Suit of W. B.*

W. LEE.

Of Pleas.

King's
Bench.*Pleas are either Special or General.*

A General Plea is pleaded on a little Piece of 2 d. Stamp Paper, without Counsel's Hand, only the Defendant's Attorney's Name to it, and he pays the Plaintiff's Attorney for entering it, as in Case, thus.

HE hath not assumed by I. C. (or Not Guilty, It is not his Deed, He owes Nothing, &c. as the Case is.)

Jan. 4, 1732.

Forster for the Defendant.

And the said E. F. by G. H.

Nil Debet.

his Attorney, comes and defends the Force, (*Wrong*) and Injury, when, &c. and says, That he does not owe to the said A. B. the aforesaid Ten Pounds, (*the Sum mentioned in the Declaration,*) or any Part thereof, in Manner and Form as the said A. B. above complains against him; and of this he puts himself upon the Country.

Note; If the Defendant's Attorney cannot be found, you may enter your general Pleas in a Book in the Office, which runs alphabetically, beginning with the Defendant's Name, thus,

B. at the Suit of A. he hath not undertaken, (or assumed.) By Refs. (You pay 2 d. for it: Or thus.

A. at the Suit of B. The abovesaid Writing Obligatory is not his Deed. By Brown. (And so of the like.)

If the Defendant pleads Not guilty in Tres-Non Cul' pass, then after the Words Defends the Force in Trespass. and Injury, when, &c. write, **And** says that he is not thereof guilty; (or that he is not guilty of the Trespass, or Trespass and Assault

King's
Bench.

aforesaid); and of this he puts himself upon the Country.

In Case.

— And says, That he is not guilty of the Premisses above laid to his Charge in Manner and Form as the aforesaid *A.* above complains against him; and of this he puts himself upon the Country.

Non Assump.

If the Defendant pleads *Non Assumpsit*, then after the Words, when, &c. write, And says that he did not undertake and promise in Manner and Form, as the said *A. B.* above complains against him; and of this he puts himself upon the Country.

Non est factum to a Bond.

— When, &c. And says that he ought not to be charged with the Debt aforesaid, by Virtue of the said Writing obligatory, because he says that the said Writing obligatory is not his Deed; and of this puts himself upon the Country.

See more of Issues a little further.

When to plead.

For the Times of Pleading, see before amongst the Rules for delivering Declarations.

Special Pleadings are drawn up in Form, setting forth the Matter pleaded at large, with an apt Conclusion to the Declaration or to the Action, as the Case is, and must be signed by Counsel, or else cannot be received. And by Rule of Court, *Mich. 2. W. & M.* such special Pleadings must be left with the Clerk of the Papers, and entered into the Book of the proper Clerk, and not delivered to, or received by the Attorney.

They are generally of two Sorts, Pleas in Abatement, which they may call Temporary, for they do not go to destroy the Action, but only stop it for a Time, until the Obstacle pleaded be removed. As to plead that the
Plaintiff

Plaintiff is excommunicated, or is outlawed, King's that doth not destroy the Action, but only Bench. suspend it till the Plaintiff takes off his Excommunication, or reverses the Outlawry, and then he may proceed in his Action. Or that the Plaintiff is an Alien Enemy; for he may be made a free Denizen, or naturalized, and then the Obstacle is removed.

A Misnomer of the Defendant's Christian Name or Surname, or naming him Executor when he is Administrator, the Plaintiff may bring a new Action without paying Costs by the right Name, or as Administrator.

Pleas in Abatement are very various, for *Of Pleas in Abatement.* Instance; to the Name, the Addition, Death, Covert Baron, one of the Executors or Administrators not named; Infancy in Plaintiff or Defendant (tho' Infancy in the Defendant may also be given in Evidence at the Trial, and will nonsuit the Plaintiff tho' not pleaded), other Actions depending; Privilege, That the Defendant is an Attorney of the Common-Pleas, and ought not to be sued in the King's Bench, (except the Plaintiff be an Attorney of the King's Bench) and the like. Whereof in *Townsend's Tables*, and *Cornwall's new Tables* to the Entries, you will find References to good Precedents.

Formerly those Pleas were merely Dilatory, and therefore it was enacted by *Stat. 4 & 5 Anne*, for the Amendment of the Law, that no dilatory Plea should be received in any Court of Record, unless the Party offering the same doth by Affidavit prove the Truth thereof, or shew some probable

Of Pleas.

Matter to the Court to induce them to believe that the Fact of such dilatory Plea is true.

The Form of an Affidavit.

In the King's Bench. *A. B. against C. D.*

C. *D. the Defendant in this Cause maketh Oath, That the Substance and Matter of Fact in the Plea hereto annexed is true.*

Another Form.

E. *F. Gentleman maketh Oath, That the Liberty of E. is in the County of S. and not in the County of M. as the Plaintiff by the Declaration hereunto annexed hath alledged.*

But if the Plea be for a Filazer, or other Officer, there need not be any Affidavit, but a Copy of the Grant of the Office affixed to the Plea.

When to plead is Abatement. Note; Where a Declaration is delivered before the Effoin-Day of the Term, the Defendant hath four Days in that Term to plead in Abatement; but if he plead not till after the four Days are expired, then it is after Impar lance.

Within the four Days of the Term, the Plaintiff is bound to take it without Impar lance; but after the four Days, an Impar lance must be entered.

A Plea in Abatement must conclude to the Declaration, as, ——— And this he is ready to verify, wherefore he prays Judgment of the Bill (or Declaration) aforesaid, and that the said Bill may be quashed.

King's
Bench.
Conclusion of a
Plea in A-
batement.

Or, if the Plaintiff be an Alien Enemy, ——— Wherefore he prays Judgment if the said *A. (the Plaintiff)* ought to be answered to the Bill aforesaid, &c.

It may not be amiss to insert one Precedent for our young Clerks Instruction.

Misnomer of the Surname.

AND the aforesaid *Charles* by *James Bradley* his Attorney comes and defends the Force and Injury, &c. (*but you must not put (quando, when) as in Pleas in Bar.*) And prays Judgment of the Bill aforesaid, because he says, That he the aforesaid *Charles* is named and called by the Name of *Charles Dolson*, and by the same Name and Surname from the Time of his Birth hitherto has always been known and called, and not by the Name of *Charles Dodson*, as he is above-named in the Bill aforesaid; and this he is ready to verify; wherefore he prays Judgment of the Bill aforesaid, and that the said Bill may be quashed.

The

The Replication.

AND the aforesaid *A. B.* saith, That for any Thing by the aforesaid *Charles* above in Pleading alledged, his Bill aforesaid ought not to be quashed, because he saith, That the same *Charles* is named and called, and on the Day of exhibiting the Bill aforesaid was named and called, as well by the Name of *Charles Dodson*, as by the Name of *Charles Dolfon*; and this he prays may be inquired of by the Country, &c.

G. H.

The Defendant's Attorney must be cautious how he rejoins to the Plaintiff's Replication; for if he join Issue, and it be found against him, the Judgment is final. The usual Way is to demur to the Replication, and then the Judgment can be but a *Respondeas Ouster*; that is, the Defendant shall plead another Plea, which may be either special or general, and such Plea must be pleaded in Days.

Note, That Pleas in Bar may destroy the Plaintiff's Action for ever, as if the Defendant pleads a general Release.

Conclusion of a Plea in Bar. Also as a Plea in Abatement concludes to the Declaration, so in Bar it must conclude to the Action as, **And** this he is ready to verify; wherefore he prays Judgment if (whether) the

the aforesaid *A. B.* ought to have or maintain his Action aforesaid against him, &c. King's Bench.

Special Pleas are left with the Clerks of the Papers, either with Mr. *Benton*, or Mr. *New*, *Of making up Paper Books.* to wit, with Mr. *Benton*, when the Plaintiff's Name begins with *A*, and with Mr. *New*, when the Plaintiff's Name begins with *B*, and so alternatively thro' the Alphabet; therefore when you are for the Plaintiff, you carry your Declaration to the Clerk of the Papers, and he will make up your Paper Book, or you may take a Copy of such Plea from him, and make it up your self copy-wise, and let him peruse it, and he will write a * Rule on the Side of the Book to this Purpose; that if the Defendant do not receive the Paper Book, and return it to be entered in four Days, then the *Non-pross* may be entered, you pay the Clerk of the Papers Ten-pence per Sheet for the Paper Book, besides the Stamps.

You deliver this Paper Book to the Defendant's Attorney, and at the same time give him Notice of Trial on the Back of the Book; and if the Defendant's Attorney does not return the Paper Book according to the Rule, you take your Judgment and execute your Writ of Inquiry on the Day given for Trial; but if he returns the Book in time and will stand to the Plea pleaded and pays you Eight-Pence per Sheet for the Pleadings on his Part, you proceed to Trial according to the Notice; but if the Defendant's Attorney will not proceed to Trial, but demurs to the Plaintiff's Replication, he first scratches out, at the bottom of the Replication, his joining Issue, and leaves a Demurrer in the Office, and returns the

* It is said that after the Rule to return the Paper Book is out, you may refuse to accept it without a new Rule, unless it be within one Day of the time, but then you may detain it four Days Inclusive.

King's
Bench.

the Paper Book to the Plaintiff's Attorney with Notice thereon, that he has left a Demurrer in the Office.

Whereupon the Plaintiff's Attorney carries the Paper Book to the Clerk of the Papers, and he will add the Demurrer and Joinder in Demurrer, and then the Plaintiff's Attorney delivers the Paper Book again to the Defendant's Attorney, which if he does not return to the Plaintiff's Attorney in a Day, and pay him Eight-pence *per fol.* for the Pleadings on his Part, you Sign your Judgment ; but if he does return it, and pay you, you make an *Incipitur* on the Roll, and enter the Proceedings with Mr. Lantrow ; then give your Roll to your Counsel, and he will move for a *Concilium*, and the Clerk of the Papers will mark in the Margent of the Record *Leſt.* (Read) ; you draw up the Rule thereupon with the Clerk of the Rules : Enter your Cause in the Clerk of the Papers's Book, and serve the Rule on the Defendant's Attorney, and make up the Books for the Judges : You pay each of their Clerks two Shillings, then by Counsel you argue the Demurrer ; and if Judgment goes for the Plaintiff before the Expiration of the Notice for Trial, you may execute your Writ of Inquiry the same Day on which Notice was given for Trial, in pursuance of a Rule made 6 *Georgii* to the Effect following : Reciting that Whereas the Plaintiffs were greatly delayed by the Defendant's demurring after the Plaintiff had taken Issue upon the Defendant's Plea, and had delivered the Paper Book with Notice of Trial according to the Practice of this Court, for that, that after Judgment obtained
for

for the Plaintiff upon such Demurrer, there is not sufficient time in Term to give Notice of executing a Writ of Inquiry within the Term in which Judgment was obtained ; therefore *It is ordered* that where the Plaintiff upon the Plea of the Defendant concludes *ad patriam* (on his Country,) and shall give Notice upon the Paper Book aforesaid, and thereupon to impede the Trial, the Defendant shall demur in Law upon the Replication, or to the Plea of the Plaintiff, and the Plaintiff shall join in such Demurrer, and he thereupon shall obtain Judgment ; the Attorney for the Defendant shall be obliged to accept of Notice of executing a Writ of Inquiry of Damages, from the time given of Notice of Trial on the Paper Book as aforesaid.

Note ; It is said that the Defendant may upon his returning the Book with the Joinder in Demurrer, scratch out the Demurrer and Joinder, and give the Plaintiff his Book with the general Issue, without being obliged to accept of Notice of Trial from the Time being given on the Paper Book ; but the Plaintiff may, to prevent this Delay upon the Defendant's Plea coming in, move the Court that the Defendant may plead *Instante*, a Plea to stand to and not wave ; draw up the Rule and serve it, and the Defendant will be confined accordingly.

Note, That if the Plaintiff refuses to reply, you may have a four Days Rule from the Master for that Purpose, which you enter with the Clerk of the Rules, and serve on the Plaintiff's Attorney ; and if he does not reply in time, you sign your *Non-profs.*

See

King's
Bench.

See several Precedents of *Non-pross* hereafter, and see at the End of the Issues and Demurrers concerning Paper Books made upon Demurrers, and on Issues to Part of the Declaration, and Demurrers as to the other Part.

Of Issues.

*Non Assumpsit by one Defendant, and
Non inform' by another, the same
Term of the Declaration.*

AND the aforesaid *A. B.* and *E.* by *C. D.* their Attorney come and defend the Force, (*Wrong*) and Injury when, &c. and the said *A.* saith, that he did not undertake and promise in manner and form as the said *J.* above complains against him, and of this puts himself upon the Country; and the aforesaid *J.* likewise, &c. and upon this the aforesaid *J.* prays that the said *E.* may likewise answer to his Declaration aforesaid; upon which the same Attorney of the aforesaid *E.* saith that he is not informed by the aforesaid *E.* of any answer to be given to the same *J.* in the Premises, nor saith any * other Thing in Bar or preclusion of the Action of the said *J.* whereby the said *J.* remains therein against the same *E.* undefended. — By Reason whereof the aforesaid *J.* ought to recover his Damages against the said *E.* on occasion of the Non-performance of the aforesaid Promises and Undertakings of the said *E.* &c. But because it is
unknown

* *Nec aliquid
aliud dic' in
barram.*

unknown to the Court of the said Lord the King's King, before the King himself, what Damages Bench. the said J. hath sustained on that Occasion; therefore as well to try the Issue aforesaid between the said J. and the aforesaid A. above-joined in Form aforesaid, as to inquire what Damages the aforesaid J. hath sustained, as well by Occasion of the Non-performing the said Promises and Undertakings, as for the Costs and Charges by him about his Suit in this Behalf put unto; Let a Jury come thereon before the Lord King at *Westminster, &c.* (*as in others*).

Cognovit Actionem for Part, and Nihil debet per Patriam for the Residue.

—When, &c. and as to five Pounds of the aforesaid fifteen Pounds which the aforesaid (*Plaintiff*) above requires against him, by Virtue of the Bill aforesaid, the said (*Defendant*) saith that he cannot deny the Action of the aforesaid (*Plaintiff*), nor but that the aforesaid Bill is the Deed of the said (*Defendant*), nor but he owes the aforesaid (*Plaintiff*) the said five Pounds in Manner and Form, as the said (*Plaintiff*) hath above declared against him; Therefore it is considered that the aforesaid (*Plaintiff*) should recover against the aforesaid (*Defendant*) the said five Pounds, and the said (*Defendant*) in Mercy, &c. And as to the aforesaid ten Pounds, Residue of the said fifteen Pounds, which the aforesaid (*Plaintiff*) above on Account requires against him, the said (*Defendant*) saith that he doth not owe the aforesaid (*Plaintiff*)

King's
Bench.

(*Plaintiff*) the same ten Pounds, nor any Part thereof, in Manner and Form, (&c.) and of this puts, (&c.) And because it is convenient and necessary that one Taxation be made of the Damages for one intire Debt aforesaid, if it happens that Judgment be given of the aforesaid ten Pounds, which the said (*Plaintiff*) above in Account requires against the aforesaid (*Defendant*), for the said (*Plaintiff*); Therefore Taxation of those Damages shall stay until the aforesaid Plea of the said Ten Pounds between the Parties aforesaid shall be determined, &c. And as to the trying of the Issue aforesaid, let a Jury come thereon, &c. (*as in others.*)

Non Assumpsit, to the second and third Promises; and a Delivery of a Piece of Woollen Cloth, to the first Promise.

————— When, &c. And as to the second and third Promises and Assumptions (*Undertakings*), in the Declaration aforesaid above-contained, saith, That he did not assume upon himself (*undertake and promise*) in Manner and Form, as the said *A. B.* above complains against him; and of this puts himself upon the Country, and the aforesaid *A.* does likewise the same. And as to the first Promise and Assumption, (*Undertaking*) in the said Declaration above-contained, the said *C.* saith, That the aforesaid *A.* ought not to have or maintain his Action aforesaid against him; because he saith, That after the making the Note and Promise in the said Declaration first mentioned, and before exhibiting the Bill aforesaid of the said *A.* to wit,
the

the thirtieth Day of *June* in the Year of our King's Lord One thousand seven hundred and thirty-Bench. two abovesaid, he the same C. gave and delivered to the aforesaid A. the Goods and Chattels following, to wit, one Piece of Drapery, called Woollen Cloth, to the Value of ten Pounds, in full Satisfaction and Discharge of the first Promise and Assumption (*Undertaking*) aforesaid. Which said Goods and Chattels the aforesaid A. then and there, in full Satisfaction, and Discharge of the first Promise and Assumption (*Undertaking*) aforesaid of the said C. had and accepted: And this he is ready to verify: Wherefore he prays Judgment if the said A. ought to have or maintain his said Action against him, &c.

And the aforesaid A. B. saith, That he, for *Replication* any Thing by the aforesaid C. D. above in his Pleading alledged, ought not to be precluded from having his Action aforesaid against him, as to the first Promise and Assumption (*Undertaking*) in the Declaration aforesaid above contained; because he protests that the aforesaid C. hath not given, or delivered to the said A. the aforesaid Goods and Chattels, to wit, one Piece of Drapery, called Woollen Cloth. And for Plea the said A. saith, That he hath not had, or received the aforesaid Goods and Chattels in Manner and Form as the aforesaid C. above in Pleading hath alledged: And he prays this may be inquired of by the Country: And the aforesaid C. likewise, &c. Therefore as well for trying that Issue, as the aforesaid other Issue between the Parties aforesaid above likewise joined; let a Jury come, (*as in others.*)

I

Non

King's
Bench.

Non Assumpsit infra sex Annos.

And now, (&c.) And saith, That the
aforesaid *A.* ought not to have or maintain
his said Action thereof against him, because he
saith, That the said *A.* ——— Day of ———
in the ——— Year of the said Lord the now
King, exhibited his Bill aforesaid against the
said *C.* and that he the said *C.* did not under-
take and promise at any Time within six Years
next before the Day of exhibiting the Bill aforesaid, in Manner and Form as the said *A.*
above complains against him; and this he is
ready to verify; wherefore he prays Judgment,
if (*whether*) the aforesaid *A.* ought to have or
maintain his Action aforesaid against him, &c.

Replication.

And the aforesaid *A.* saith, That for any
Thing by the aforesaid *C.* above in Pleading al-
leged, he ought not to be precluded from
having his said Action thereof against him, be-
cause he saith, That the aforesaid *C.* within six
Years before the Day of his the said *A.*'s exhi-
biting his said Bill, did undertake and promise
in Manner and Form, as the aforesaid *A.* hath
above declared against him: And this he prays
may be inquired of by the Country: And the
aforesaid *C.* likewise, &c. Therefore let a
Jury come thereon, &c. (*as in others*).

Non

Non Assump' generally to Part, and
 Non Assump' infra sex Annos to the
 other Part.

King's
 Bench.

And the aforesaid (*Defendant*) by *A. B.* his Attorney, comes and defends the Force and Injury when, &c. And saith, That the aforesaid (*Plaintiff*) ought not to have or maintain his Action aforesaid thereof against him, because he saith, That as to the first Promise and Assumption (*Undertaking*) in the Declaration aforesaid above supposed to be made, the said (*Defendant*) saith, That he did not assume upon himself (*undertake and promise*) in Manner and Form, as the said (*Plaintiff*) above complains against him ; and of this he puts himself upon the Country. (* And the aforesaid *Plaintiff*) likewise, &c.) And as to the Residue of the Promises and Assumptions (*Undertakings*) in the Declaration aforesaid above supposed to be made, the said (*Defendant*) saith, That he the aforesaid (*Defendant*) did not assume upon himself (*undertake and promise*) at any Time within six Years next before the Day of exhibiting the Bill aforesaid of the said (*Plaintiff*) in Manner and Form as the aforesaid (*Plaintiff*) above thereof complains against him: And this he is ready to verify. Wherefore, &c. (*as in others*).

* This when
 Issue joined.

King's
Bench;

Plene Administravit.

And now, (&c.) his Action, (&c.) because he saith, That at the Time of exhibiting the Bill aforesaid he had fully administred all and singular the Goods and Chattels which were of the aforesaid J. at the Time of his Death, in his Hands to be administred, by which the aforesaid C. could not pay to the aforesaid A. his Debt aforesaid: And this he is ready to verify. Therefore, &c.

Replication.

And the aforesaid A. (&c.) ought not to be precluded, (&c.) because he saith, That the aforesaid C. hath, and at the Time of exhibiting the Bill aforesaid, to wit, (*such a Day and Year,*) at (&c.) had, diverse Goods and Chattels which were of the aforesaid J. (*the Testator,*) at the Time of his Death, in his Hands, to be administred, to the Value of, (&c.) whereby he could have satisfied the said A. his Debt aforesaid, to wit, at S. in the County aforesaid: And this he prays may be inquired of by the Country: And the aforesaid C. likewise, &c. Therefore let a Jury, (&c.)

Non Dimisit.

And now, (&c.) And the said C. defends the Force and Injury when, &c. and saith, That the aforesaid A. did not demise to the said C. the Messuage or Tenement aforesaid, and the rest of the Premisses, with the Appurtenances in Manner and Form as the aforesaid

said *A.* above complains against him : And of this he puts himself upon the Country : And the
 King's Bench.
 aforesaid *A.* likewise, &c. Therefore let a Jury come, (&c.)

Non detinet per Patriam.

And now, (&c.) And the said *C.* defends the Force and Injury when, &c. and saith, That he does not detain from the said *A.* the Goods and Chattels aforesaid in the Declaration aforesaid specified, nor any Part thereof, in such Manner and Form as the aforesaid *A.* above complains against him : And of this he puts himself upon the Country : And the aforesaid *A.* likewise, &c. Therefore let a Jury come, (&c.).

Comperuit ad Diem to a Bail-Bond.

And now, (&c.) defends the Force and Injury when, &c. and prays Oyer of the Writing Obligatory aforesaid ; and it is read to him, (&c.) He also prays Oyer of the Condition of the said Writing ; and it is read to him in these Words, to wit, The Condition, (&c. setting forth the whole Condition ; also he may set forth the Obligation, if it be to his Advantage.) Which being read and heard, the said *C.* saith, That the aforesaid *A.* ought not to have or maintain his Action aforesaid thereof against him, because he saith That after the making of the Writing Obligatory aforesaid, and before the Day of exhibiting the Bill aforesaid

King's
Bench.

* Or rather
put the Return
as in the Con-
dition thus, On
—next
after—

said of the said *A.* to wit, the* — Day of —
(being the Appearance Day,) next following
after the Date of the Writing Obligatory afore-
said, the aforesaid *C.* appeared before the said
Lord the now King, to answer to the afore-
said *A.* in the Plea of Debt aforesaid, according
to the Form and Effect of the Condition of the
Writing Obligatory aforesaid: And this he is
ready to verify, by the Record of the Bail in
the Court of the said Lord the King before the
King himself at *Westminster* aforesaid remaining:
Wherefore he prays Judgment, if the aforesaid
A. ought to have or maintain his Action afore-
said, (&c.).

Another in Trespass.

—— Because he saith, That he did appear
before the Lord the King at *Westminster* afore-
said, the aforesaid — Day of — to an-
swer to the aforesaid *A.* in the Condition afore-
said above-named, of the aforesaid Plea of Tres-
pass, according to the Form and Effect of that
Condition; the Appearance of which said *C.* in
the Court of the said Lord the King, before the
King himself at *Westminster*, was then and
there recorded, as by the Record thereof re-
maining in the said Court of the said Lord the
King before the King himself at *Westminster*
aforesaid manifestly appears: And this he is
ready to verify by that Record: Wherefore he
prays Judgment if (whether) the aforesaid
A. (&c.)

Replication.

—— Ought not to be precluded (&c.) be-
cause he saith, That there is no such Record of
the

the Appearance of the said *A.* before the said Lord the King at *Westminster* aforesaid, on the ——— Day of ——— remaining in the same Court of the said Lord the King at *Westminster* aforesaid, as the said *C.* hath above alledged: And this he is ready to verify: Wherefore he prays Judgment, and his Debt, together with his Damages, by Occasion of the detaining of that Debt, to be adjudged to him, &c.

King's Bench.

———— Wherefore he prays Judgment, and his Damages by Occasion of the Trespass aforesaid, (or by Occasion of the Premisses,) to be adjudged to him, &c.

Replication in Trespass and Case.

And the aforesaid *C.* saith, That there is such a Record of the Appearance of the said *C.* before the King himself at *Westminster* aforesaid, on the ——— Day of ———, remaining in the aforesaid Court of the said Lord the King, before the King himself at *Westminster* aforesaid, as he hath above alledged: And this he is ready to verify by that Record, &c. Therefore the said *C.* is commanded to have here (*such a Day*) that Record at his Peril, &c.

Rejoinder.

Conditions performed to a Bond.

And now, (&c.) and prays (&c.) which being read, (&c.) ought not to have his Action, (&c.) because he saith, That he the said *C.* in and upon the first Day of *May*, in the Condition aforesaid above specified, paid to the aforesaid *A.* the aforesaid twenty Pounds in the same Condition abovementioned, which he ought to have paid to him at the same Day, according to the Form and Effect of the said

Of Pleas.

King's
Bench.

Replication.

Condition, to wit, at, (*&c.*) and this he is ready to verify; wherefore he prays, *&c.*

—(*Plaintiff*) ought not to be precluded, *&c.* because he saith, That the said C. upon the said first Day of *May* above-mentioned, did not pay to the aforesaid A. the said twenty Pounds in the Condition aforesaid above-mentioned, according to the Form and Effect thereof, in Manner and Form, as the aforesaid C. above in Pleading hath alledged: And this he prays may be inquired of by the Country: And the aforesaid A. likewise, *&c.* Therefore let a Jury come, (*&c.*)

Infra Ætat'.

And now, (*&c.*) ought not to have his Action, (*&c.*) because he saith, That the said C. at the Time of making the Writing Obligatory aforesaid, was within the Age of Twenty-one Years, (to wit, of the Age of Seventeen Years, and no more.) And this, (*&c.*) Wherefore, (*&c.*)

Replication.

—The (*Plaintiff*) ought not to be precluded, (*&c.*) because he saith, That the aforesaid C. at the Time of making the Writing Obligatory aforesaid, was of the full Age of One and twenty Years, without that, that the said C. at the Time of making the said Writing Obligatory was within the Age of Twenty-one Years, to wit, of the Age of 17 Years, as the aforesaid C. above in Pleading hath alledged. And this he prays may be inquired of by the Country: And the aforesaid C. likewise, *&c.* Therefore, (*&c.*)

Or

Or thus, *Infra Ætat*⁹.

King's
Bench.

And now, (*&c.*) ought not to have his Action, (*&c.*) because he saith, That he the said C. at the Time of making the several Promises and Undertakings in the Declaration aforesaid above-mentioned, was under the Age of Twenty-one Years: And this, (*&c.*) Therefore, (*&c.*)

Per Dures.

And now, (*&c.*) And saith, That he ought not to be charged with the Debt aforesaid, by Virtue of the Writing aforesaid, because he saith, That he at the Time of executing the Writing aforesaid was imprisoned by the aforesaid A. and others of his Confederates, to wit, at B. in the County aforesaid, and there detained in Prison, until the same C. by the Force and Hardships (*Duress*) of that Imprisonment, the said Writing to the aforesaid A. then and there made and sealed, and as his Act and Deed to the same A. delivered: And this, (*&c.*) Wherefore he prays Judgment, if he ought to be charged with the Debt aforesaid by Virtue of the Writing Obligatory aforesaid, *&c.*

—Ought not to be precluded, (*&c.*) be- *Replication.*
cause he saith, That the said C. at the Time of executing of the Writing aforesaid, was of his own Right at large (*Liberty*) and not in any Prison, and of his mere free Will made and sealed, and as his Act and Deed delivered the

Of Pleas.

the said Writing to the said *A.* and not by Force and Hardships (*Dureſs*) of Imprisonment, as the aforesaid *C.* above in pleading hath alledged: And this he prays may be inquired of by the Country: And the aforesaid *C.* likewise, &c. Therefore, (&c.)

Per Minas.

—When, &c. And saith that the said *A.* ought not have his Action, (&c.) because he saith, That the aforesaid *A.* at the Time of executing the Writing Obligatory aforesaid, threatened to kill and maim the said *C.* unless he would make and seal to the aforesaid *A.* the Writing aforesaid at *E.* aforesaid; which said Writing the said *C.* for Fear of those Threats then and there made to the aforesaid *A.* And this, (&c.) Wherefore, (&c.)

Replication.

—Ought not to be precluded (&c.) because he saith, That the aforesaid *C.* at the Time of executing the Writing aforesaid, was of his own Right at large (*Liberty*) and that Writing of his own mere and free Will to the same *A.* then and there made, and not for Fear of Threats, so as the aforesaid *C.* above in Pleading hath alledged: And this he prays may be inquired of by the Country, (&c.)

Son Assault Demesne.

And now, (&c.) defends the Force and Injury when, &c. And as to coming with Force and

and Arms, or any Thing which is against the Peace of the said Lord the King, he saith, That he is not thereof guilty; and of this he puts himself upon the Country; and the aforesaid *A.* likewise, &c. And as to the Residue of the Trespass aforesaid above supposed to be done, the said *C.* saith, That the aforesaid *A.* ought not to have or maintain his Action aforesaid thereof against him, because he saith, That the aforesaid *A.* the Day and Year above-said, in the Declaration of the aforesaid *A.* above specified, at *E.* aforesaid in the County aforesaid, with Force and Arms made an Assault upon the said *C.* and him the said *C.* would then and there have beaten, wounded, and evilly treated, unless the said *C.* against the aforesaid *A.* then and there had sooner defended himself. And so the same *C.* saith, That the Evil or Damage, if any then and there happened to the said *A.* was of the proper Assault of the said *A.* and in Defence of the said *C.* And this he is ready, (&c.) Wherefore, (&c.)

King's
Bench.

And the aforesaid *A.* saith, That he (&c.) ought not to be precluded, (&c.) because he saith, That the aforesaid *C.* of his own proper Wrong, and without such Cause, as by the said *C.* above in Pleading is alledged, upon the said *A.* made an Assault, and him the said *A.* did beat, wound, and evilly treat, in Manner and Form as the aforesaid *A.* above complains against him: And this he prays may be inquired of, (&c.) Therefore, (&c.)

Replication.

Non Culp' by *C.* as to the whole Trespass and Assault. *Non Culp'* by the Wife of *C.* as to the Force and Arms, &c.
And

Of Pleas.

And *Son assault demesne* by the Wife;
as to the Residue of the Trespas and
Assault.

Note ; These Pleas were pleaded to a Declaration brought against C. and *Anne* his Wife, for a Trespas and Assault committed by them on the Wife of *A*.

And the aforesaid C. and *Anne*, by *W. N.* their Attorney, come and defend the Force and Injury when, &c. And as to the whole Trespas and Assault by the said C. in the Declaration aforesaid above supposed to be done, the said C. saith, That he is not thereof guilty; and of this he puts himself upon the Country; and the aforesaid *A*. and *Sarah* likewise, &c. And as to the coming with Force and Arms, or any Thing which is against the Peace of the said Lord the now King, by her the said *Anne* in the Declaration aforesaid above supposed to be done, the said C. and *Anne* say, That the said *Anne* is not thereof guilty; and of this she puts herself upon the Country, and the aforesaid *A*. and *Sarah* likewise, &c. And as to all the Residue of the Trespas and Assault, by the said *Anne* in the Declaration aforesaid above supposed to be done, the said C. and *Anne* say, That the aforesaid *A*. and *Sarah*, ought not to have their Action aforesaid against them, because they say, That the aforesaid *Sarah*, the Day and Year in the Declaration aforesaid above-mentioned, at the Parish aforesaid in the County aforesaid, with Force and Arms upon the said *Anne* made an Assault, and her the said *Anne* then and there would have beaten, wounded and evilly treated; unless the same

Anne

Anne then and there had sooner defended her- King's
self against the said *Sarah*. And so the said *C. Bench.*
and *Anne* say, That if any Damage or Evil
then and there accrued to the said *Sarah*, it
was of the said *Sarah's* own Assault, and in
the Defence of the said *Anne*: And this the
said *C.* and *Anne* are ready to verify: Where-
fore they pray Judgment, if the aforesaid *A.*
and *Sarah* ought to have or maintain their
Action aforesaid against them, &c.

And the aforesaid *A.* and *Sarah*, as to all the *Replication.*
Residue of the Trespass and Assault by the said
Anne in the Declaration aforesaid above sup-
posed to be done, say, That they, for any
Thing by the said *C.* and *Anne* above in that
Behalf by Pleading before alledged, ought
not to be precluded from having their Action
aforesaid thereof against them, because they
say, That the aforesaid *Anne* of her own pro-
per Wrong, and without such Cause, as by
the said *C.* and *Anne* above in that Behalf
by Pleading alledged, made an Assault upon
the said *Sarah*, and her did beat, wound,
and evilly treat, in Manner and Form as the
aforesaid *A.* and *Sarah* have above complained
against the said *C.* and *Anne*: And this they
pray may be inquired of by the the Country:
And the aforesaid *C.* and *Anne* likewise, &c.
Therefore for trying as well, (&c.) Let a Jury
come, (as in others.)

Non damnificatus *pleaded to a Counter-*
Bond.

And now, (&c.) Defends the Force and In-
jury when, &c. and prays Oyer of the Wri-
ting

King's
Bench.

ting obligatory aforesaid; and it is read to him, &c. He also prays Oyer of the Condition of the said Writing; and it is read to him in these Words, *The Condition*, (&c.) which being read and heard, the said C. saith, That the aforesaid A. never was damnified by Occasion of the aforesaid Writing obligatory: And this, (&c.) Wherefore, &c.

Another.

— Which being read and heard the said C. saith, that he the said C. at the Time of executing the Writing obligatory aforesaid, hath hitherto saved and kept harmless, and indemnified the aforesaid A. from all Troubles, Suits, Inconveniences, Damages and Disturbances, on Occasion of the Writing obligatory aforesaid, (or otherwise against such and such Persons, as in the Condition expressed.) And this, (&c.) Wherefore, (&c.)

Replication.

— Ought not to be precluded, (&c.) because he saith, That the aforesaid C. upon — Day of — above mentioned, did not pay, &c.

Or otherwise shews how he was damnified, or that the first Obligee threatened and endeavoured to arrest the said (Plaintiff) for the Money which the (Plaintiff) paid to him; and so is damnified, (&c.) (as the Case requires)

Ne unques Receptor.

And now, (&c.) the Force and Injury, when, &c. and saith, That he never was Receiver of the Money of A. B. by the Hands of the aforesaid

aforesaid C. D. to Account for the same to the said A. B. when he should be thereto required, ^{Knig's Bench.} in Manner and Form as the said A. B. hath above declared against him: And of this he puts himself upon the Country: And the aforesaid A. B. likewise, &c. Therefore, (&c.)

Ne unques *Executor.*

And now, (&c.) because he saith, That he the said C. never was Executor of the last Will and Testament of the aforesaid J. S. lately deceased, nor ever administred any Goods or Chattels of the said J. as Executor of the said J. and this he is ready, (&c.) Wherefore, (&c.)

—— Ought not to be precluded, (&c.) be- ^{Replication.} cause he saith, That the aforesaid C. administred divers Goods and Chattels which were of the said J. S. at the Time of his Death, after the Death of the said J. as Executor of the last Will and Testament of the said J. at R. in the County aforesaid: And this he prays may be inquired of by the Country: And the aforesaid C. likewise, &c. Wherefore, (&c.)

Ne unques *Administrator.*

—— Because he saith, That Administration of all and singular the Goods and Chattels aforesaid, which were the aforesaid J. at the Time of his Death, to the said C. by the aforesaid Archbishop of Canterbury, was never granted: And this, (&c.) Wherefore, (&c.)

—— Ought

King's
Bench.

Replication.

—— Ought not to be precluded, (&c.) because he saith, That Administration of all and singular the Goods and Chattels, which were of the said J. S. at the Time of his Death, by the aforesaid Archbishop of *Canterby*, at S. was granted to the aforesaid C. as the said A. hath above supposed by his Declaration aforesaid. And this he prays, (&c.)

Riens by Descent pleaded by an Heir.

And now, (&c.) defends the Force and Injury, when, &c. and saith, That he ought not to be charged with the Debt aforesaid, as Son and Heir of the aforesaid J. S. Gent. his Father; because by protesting that the Writing aforesaid is not the Deed of the aforesaid J. for Plea saith, That he hath not any Lands or Tenements by Descent as Heir of the aforesaid J. S. his said Father, in Fee-simple, nor had on the Day of exhibiting the Bill aforesaid, nor ever afterwards: And this he is ready to verify: Wherefore he prays Judgment, if, as Son and Heir of the aforesaid J. S. his Father, by Virtue of the Writing aforesaid, he ought to be charged with the Debt aforesaid, &c.

Replication.

—— Because he saith, That on the Day of exhibiting the aforesaid Bill of the said A. to wit, (*such a Day and Year*) the aforesaid C. had Lands and Tenements sufficient by hereditary Descent of the aforesaid J. his Father, in Fee-simple, wherewith he could have satisfied the said A. to wit, at R. in the County of L. And this he prays may be inquired of by the Country: And
the

the aforesaid C. likewise, &c. Therefore let a King's Jury come thereon before the Lord the King at Bench. *Westminster*, on — next after — And who neither, &c. to recognize, &c. because as well, &c. the same Day is given to the Parties aforesaid there, &c.

It is enacted by the Statute of the 4 & 5 *Several Magna Ann. cap. 16.* that any Defendant, or Tenant *ters may be* in any Action or Suit, or any Plaintiff in Re-pleaded. plevin, in any Court of Record, may with Leave of the same Court, plead as many several Matters thereto, as he shall think necessary for his Defence.

Provided nevertheless, that if any such Matter shall, on a Demurrer joined, be judged insufficient, *Costs for Insufficiency, on a Demurrer.* Costs shall be given at the Discretion of the Court: Or, if a Verdict be found upon any Issue in the said Cause for the Plaintiff, or Defendant, Costs shall also be given in like manner, unless the Judge who tried the said Issue, shall certify that the said Defendant, or Tenant, or Plaintiff in Replevin, had a probable Cause to plead such Matter, which upon the Issue shall be found against him.

The Replication is the Plaintiff's Answer to *Replication.* the Defendant's Plea, and great Care must be taken lest the Replication differ or vary from *Must not differ from the* the Count, and that it also maintain the Cause *Count.* of the Plaintiff's Action; for if it appear by the Replication, that the Plaintiff had no Cause of Action, there he shall not have Judgment, although the Defendant's Plea, or Bar, be insufficient in Matter.

King's
Bench.

And if it differs or varies from the Count, and makes not good the same, it is called a Departure in Pleading, which is not sufferable.

Also when the Replication doth neither confess and avoid, nor traverse the Matter of the Bar, it is Naught, and the Defendant may demur to it, and shew this for Cause.

Rejoinder.

The next which follows the Replication, is a Rejoinder, and is where the Defendant makes Answer to the Plaintiff's Replication; and it ought to be a sufficient Answer, and must enforce the Plea, or Bar.

Surrejoinder.

And the next follows a Surrejoinder, or a second Defence of the Plaintiff's Action opposite to the Defendant's Rejoinder.

And every one of these must be a sufficient Answer to the Matter objected by the adverse Party, and follow and enforce the Matter offered by him, that did plead before.

And as the Replication must not differ from the Count, so neither must the Rejoinder from the Bar.

*Rebutter and
Surrebutter.*

Sometimes, (though very rarely,) the Parties go so far in Pleading, that it comes to a Rebutter, and Surrebutter, before any Issue or Demurrer, and thereto a Demurrer, and Joinder in Demurrer.

Note ; Where the Defendant pleads a sham Plea in Bar, and afterwards Demurs to the Plaintiff's Replication : If there are any material Mistakes in the Declaration, the Plaintiff will fail in his Action, the Fault appearing first on his Side.

It is the same where the Plaintiff Demurs to a bad Plea of the Defendant ; for though the Plaintiff's Plea is ill, yet if the Declaration be faulty

faulty, the Plaintiff must likewise fail in his King's
Bench
Action.

Where the Declaration is good, and there is a Default in the Defendant's Plea, tho' the Plaintiff has joined Issue upon it, which is found against him, yet the Plaintiff shall have Judgment upon his good Declaration. *Cro. Car. 25.*

Next, We will see how to make up Issues.

Of making up Issues.

Suppose you have an Issue to make up in *Hillary* Term from a Declaration in *Michaelmas* (or some other preceding Term) you write at the Top of your first Sheet of Paper, thus, according to the Term.

Of the Term of St. Hillary in the 13th Year of the Reign of King George the Second.

Anthony and Bigge.

Somersetshire, ss. Be it remembered, That Memorandum (heretofore, to wit,) in the dum of Term of *St. Michael* (*Holy Trinity, Easter, &c.* another Term, The same Term as the Declaration is of) last past before the Lord the King at *Westminster*, came *A. B.* (naming the Plaintiff in the Declaration) by *C. D.* (naming the Plaintiff's Attorney) his Attorney, and brought here into the Court of the said Lord the King, then there his certain Bill against *E. F.* (naming the Defendant, and if an als' dict' insert it,) in the Custody of the Marshal, &c. of a Plea of Debt, (*Trespafs, Trespass and Assault, Trespass on the Case, Breach of Covenant,*

Of making up Issues.

nant, &c. as the Case is,) and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, which said Bill follows in these Words, to wit, **Somersetshire**, to wit, *A. B.* Complains of *E. F.* being in the Custody of the Marshal of the *Marshalsea* of the Lord the King, before the King himself, of a Plea that he render to him, &c. (*Word for Word to the End of the Declaration*) and therefore he brings Suit, &c.

Note ; When your Declaration is of a Plea, that he render, then say in your Memorandum, or Issue, of a Plea of Debt, when for that, to wit, then say, Of a Plea of Trespass upon the Case; when in Trespass say, Of a Plea of Trespass; when in Ejectment say, Of a Plea of Trespass and Ejectment; when in Covenant say, Of a Plea of Covenant broken; when in Assault and Battery say, Of a Plea of Trespass and Assault, &c.

Then beginning a new Line after the End of your Declaration, you must enter your Imparlance thus:

Imparlance.

* If Declaration was delivered of Michaelmas Term, the Plea of Hillary Term, and you don't deliver the Issue before Trinity Term, it must be made an Issue of Trinity Term, and you must say, **And now** at this Day, to wit (the first Day of Trinity Term) &c.

And now at this Day, to wit, *Tuesday* next after the Octave of St. *Hilary* (* the first Day of the Term the Issue is entred) in this same Term, until which Day the said *E. F.* (the Defendant) had leave to imparle to the Bill aforesaid, and then to answer, &c. cometh as well the said *A. B.* (the Plain-

tiff) by his Attorney aforesaid, as the said *E. F.* (the Defendant) by *G. H.* his Attorney. And the said *E. F.* defends the Force

(*Wrong*)

(Wrong) and Injury, when, &c. And saith, King's Bench.
(&c. as in the Plea to) And of this he puts himself upon the Country: And the aforesaid A. B. likewise, &c. Therefore let a Jury come thereupon before the Lord the King at Westminster on — next after — (*the last Day of the Term the Issue is made up, but if it be in London or Middlesex, it must be some small Time before the Trial; if you leave a Blank, the Clerk of the Nisi prius will insert the Day at the Examining of the Record*): And who neither, &c. to recognise, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c.

If the Issue is joined the same Term the Declaration is of, enter it thus:

Somersetshire, ss. **B**E it remember'd, that Memorandum of the same Term.
on Monday next after the
Octave of St. Hillary (*the first Day of that Term the Declaration is of,*) in this same Term before the Lord the King at Westminster came (*the Plaintiff*) by A. B. his Attorney, and brought here into the Court of the said Lord the King then there his certain Bill against (*the Defendant*) in the Custody of a Marshal, &c. of a Plea, (&c.) as in the foregoing. Memorandum of another Term.

This is the usual Way, but it seems more proper to say after his Attorney, and he brings here into the Court of the said Lord the King now here his certain Bill, (&c.)

Note; If the Declaration be above four Memorandum where above four Terms.
Terms standing, then you say, **B**e it re-
member'd,

King's
Bench.

member'd, that heretofore, to wit, in the Term of — in the — Year of the Reign of the Lord the now King, (*naming the Term and Year,*) before, (&c.)

Plea.

Note; The Memorandum the same Term with the Declaration hath no Imparlance, but after the Declaration you must enter the Plea thus, (*beginning a new Line.*) And the aforesaid (*Defendant*) by A. B. his Attorney, comes and defends the Force and Injury when, &c. And says, &c. *as it is in another which hath no Imparlance.*

You should enter your Issue before you seal your Record, however before the next Term; (if your Trial be after the Term, or at the Assizes, it is entered upon a Roll out of the Office.) See Instructions to enter up Judgments. See after to give a Rule to enter the Issue.

Of Record.

HAVING made up your Issue, the next Thing is to ingross it as a Record for a Trial, which is to be done in a Press or Presses of Parchment, given out from the *Nisi prius* Office for that Purpose. 'Tis usual to buy them at a Stationer's.

Double Half-
Crown Stamp
each Press.

Note; You must write but on one Side of the Press, and if one Press will not serve, you must take another, beginning near the Top, only leaving a Bit to sew it to the other: But you may have one Piece big enough for your Purpose.

Rule

Rule your Parchment near the Top, and King's make a Margent of about three Parts of an Inch. Inch, and then on the first, second or third upper Lines in large Hand, thus:

Pleas before the Lord the King at Westminster, of the * Term of the * The first Holy Trinity in the 13th and 14th ^{Placita must} Years of the Reign of the Lord George ^{be the same} the Second, by the Grace of God, of ^{Term as the} Great Britain, France, and Ireland ^{Issue is of} King, Defender of the Faith, &c, and in the Year of our Lord 1740.

Then thus in small Hand.

Somerset, **J. B**E it remember'd, that heretofore, to wit, in the Term of Easter last past, before the Lord the King at Westminster came A. B. by C. D. his Attorney, and brought here into the Court of the said Lord the King then there, his certain Bill against E. F. (* and so on to the End of your * If the Defens- Issue Word by Word; and after that, leaving dant be in the about Half an Inch Distance, you must write an- County Prison, other Placita in large Hand as above, (to wit.) say, Being in the Custody of the Sheriff of the County of D. by Virtue of a Writ of Latitat of the Lord the King, issuing out of the Court of the said Lord the King, before the King himself, at Westminster in the County of Middlesex, of a Plea, (&c.) both in the Memorandum and Declaration, the same in Judgment by Nil dicit, &c. (See after.)

King's
Bench.

* The same
Term as the
Cause is to
be tried.

Pleas before the Lord the King at
Westminster of the * Term of the
Holy Trinity in the 13th and 14th
Years of the Reign of the Lord
George the Second, by the Grace of
God, of Great Britain, France and
Ireland King, Defender of the Faith,
&c. and in the Year of our Lord
1740.

And then beginning a new Line, enter a Ju-
rata as follows in small Hand.

Jurata at the Somerset, to wit, **T**HE Jury between A. B.
Assizes.

But if by O- and E. F. of a Plea of Trespass, (as the Action
riginal, until is) is respited before the Lord the King at
fifteen Days Westminster until — (the first Day of next
from the Term,) next after — unless the Justices of
Day of Ea- the Lord the King, appointed to hold the As-
ster, where- sises in the County aforesaid, come before that
soever, &c.

Wednesday Time, to wit, on — at — (the Day and
the fourteenth Place of the Assizes,) according to the Form of
Day of the Statute, &c. for Default of the Jurors, &c.
March at C. Therefore let the Sheriff have the Bodies, &c.
in the County The same Day is given to the Parties afore-
aforesaid. said there, &c. And be it known, that the King's

If by Original, Writ for that Purpose, the — Day of — (the
in eight Day of the Return of the Venire, being the Terme
Days of the of the Distringas, and last Day of that Term
Holy Trinity. the Record is made,) in this same Term, before
the Lord the King at Westminster, was de-
livered of Record to the Deputy Sheriff of
the

the County aforesaid, to be executed according to Law, &c. King's Bench.

Entry of a Writ delivered to the Sheriff's Deputy in Court. (Vide Dalt. Sher. fol. 456.)

BE it remember'd, That the Justices of the Lord the King here (*such a Day*) in this same Term have delivered to J. D. Deputy Sheriff of the County aforesaid a certain Writ of the Lord the King closed, directed to the said Sheriff to be executed according to Law; which said Writ the same Deputy here in Court hath opened; the Tenor of which said Writ follows in these Words: **George the Second, &c.**

Thus is your Record ready for Sealing, (*See Instructions, post.*) and you may cut off the remaining Parchment within an Inch from the last Line.

But *Note*; If your Cause is to be tried in London, your *Jurata* must be after this Manner:

London, to wit, **T**H E Jury between A. B. *Jurata in*
by his Attorney, Plaintiff, London.
and E. F. of a Plea of Trespas, (*as the Action is,*) is respited before the Lord the King at Westminster, until ——— (*the very next Day after the Sittings, if in Term; if after Term, then until the first Day of the next Term, as Wednesday next after three Weeks from the Day of St. Michael,*) unless the King's trusty and well-

King's
Bench.

well beloved Sir *William Lee*, Knt. Chief Justice of the Lord the King, assigned to hold Pleas in the Court of the said Lord the King before the King himself, (*if in Term, say,*) come before that Time, to wit, on *Friday* next after — (*if after Term, say,*) on — (*the Day of Sittings,*) the thirteenth Day of *June*, at *Guildhall, London*, by Form of the Statute, &c. thro' Default of the Jurors, &c. Therefore let the Sheriffs have the Bodies, &c. The same Day is given to the Parties aforesaid there, &c.

Note ; The Sciendum est, quod breve, &c. is not used for London as for the County.

Jurata in
Middlesex.

IF your *Action* be in *Middlesex*, then say, unless the King's trusty and well beloved Sir *William Lee*, Knt. (&c.) at *Westminster* aforesaid in the County of *Middlesex*, in the Great Hall of Pleas there, by Form of the Statute, &c. (*as before.*)

See hereafter for some special *Jurata's*.

In order to a Trial to be had upon this Issue and Record, you must also make out a *Venire facias*, the Form whereof is this:

Venire facias.

Q. *If in Middlesex in Term-time.*

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Somersetshire* Greeting: We command you, that you cause to come before us at *Westminster*, on *Wednesday* next after three Weeks of the Holy Trinity, (*the last Day of the Term the Issue is made up,*) Twelve free and lawful

ful Men of the Body of your County, (*by a King's late Act of Parliament,*) each of whom have Bench. at least Ten Pounds a Year in Lands, Tenements, or Rents, by whom the Truth of the Matter may be the better known; and who neither are of Kin to the said *A. B.* the Plaintiff, nor to the said *C. D.* to make a certain Jury of the Country between the Parties aforesaid, of a Plea of Trespass (*as the Action is,*) because as well the said *C. D.* (*the Defendant*) as the aforesaid *A. B.* (*the Plaintiff*) between whom (*thereof*) the Contention (*Controversy*) is, have put themselves upon that Jury: And have you there then the Names of that Jury, and this Writ. Witness Sir *William Lee*, Knt. at *Westminster*, the — Day of — in the — Year of our Reign.

If the Cause be in London, then make the Writ of the Neighbourhood of the Parish of the Blessed Mary of the Arches, in the Ward of Cheap, &c. unless it be otherwise laid. And Q if it ought not to be returnable the Day of the Sittings, if in Term-time.

Anthony and Bigge.

This Form was settled by 35 *Hen. 8. c. 26.* and by 4 & 5 *Will. c. 24.* each Juror to have 10*l.* per Annum, and a Tales 5*l.* per Annum.

Note, That by the Rules of the Court, if the Plaintiff will not try his Issue after it is joined, in such Time as he ought by the Course of the Court; in such Case the Defendant may make out the *Venire* by *Proviso*, if he will, that he may free himself, if he can, of the Danger and Trouble he may be subject to by the depending of the Action against him, and to recover his Costs for his unjust Vexation; in which Case the *Venire* is to run thus; after you come to, upon that Jury, say, *Provided always, that if two Writs thereof should come to you,* *Venire by Proviso.* *See after.*

return

King's
Bench.
See after.

return and execute one of them only: And have, (&c.)

And it is to be observed, That in Actions laid in *London* or *Middlesex*, the Defendant ought not to give the Plaintiff a Rule to enter his Issue, or to try the Cause by *Proviso* the same Term Issue is joined, unless the Plaintiff hath first given the Defendant Notice of a Trial that Term, and hath made Default; and that if the Action lie in the Country, the Defendant shall give the Plaintiff a Rule to enter his Issue as of the same Term Issue is joined.

If the Issue has been delivered and not tried, (it is said) if the Plaintiff intend to desist, 'tis not convenient to enter it on the Roll; for if it be not carried in, the Defendant, before he can carry it down by *Proviso*, must give the Plaintiff a Rule to bring in the Record, after which the Plaintiff hath the next Term to try it, before the Defendant can carry it down by *Proviso*; but if it be entered, and not tried, the Defendant may carry it down next Sittings after it is in the Office. Again, if the Defendant give the Plaintiff a Rule to enter his Issue, (the Action being laid in *London* or *Middlesex*,) the Plaintiff must bring his Record into the Office within four Days after Notice of the Rule; and if the Action be laid in the Country, he must bring it in before the Continuance-Day of that Term, or in Default thereof a Nonsuit may be signed and entered, and Costs will be allowed the Defendant.

The Manner of Entring a Rule for the ^{King's} *Plaintiff to enter his Issue is thus:* ^{Bench.}

THE Defendant's Attorney carries the Copy of the Issue to the Master of the Office, and desires him to give a Rule to enter the Issue, and he will write in the Margin of the Copy of the Issue, what Day he thinks fit, (for Example,) *Wednesday after the Octave of Trinity, to reply and enter the Issue;* then carry this Rule to the Clerk of the Rules, and he will enter it, and write under the Rule *Entered: Make a Copy of the Issue at the same Time, and if he do not enter the Issue by the Day limited, the Master will sign Judgment and tax Costs: You must enter the Issue upon a Roll of the same Term, and add, AND upon this the same (Defendant) prays, that the aforesaid (the Plaintiff) may Entry of a* *reply to the Plea of the said (the Defendant) Nonsuit for* *and thereupon a Day thereof is given by the not entring the* *Court of the Lord the King now here to the Issue.* *aforesaid (Plaintiff) before the Lord the King, until, (&c) to reply to the Plea aforesaid; the same Day is given to the aforesaid (the Defendant) and so enter the Continuance to the Term when the Rule is given; then say, At which Day here cometh the aforesaid (Defendant) by his Attorney aforesaid, and the Plaintiff is called by the Court of the said Lord the King now here, that he should reply to the Plea aforesaid, and enter the Issue in the Plea aforesaid on Wednesday, (&c.) in this same Term, at his Peril, &c. at which Day before the Lord the King here comes the aforesaid (the Defendant)*

King's
Bench.

Judgment.

Defendant) by his Attorney aforesaid, and the aforesaid (*the Plaintiff*) altho' solemnly required does not come, nor reply to the Plea of the aforesaid (*the Defendant*) nor is his Writ aforesaid against the said (*Defendant*) further prosecuted; Therefore it is considered, that the aforesaid (*the Plaintiff*) shall take nothing by his Writ aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, be in Mercy, and the aforesaid (*the Defendant*) shall go thereof without a Day, &c. And further, It is is considered, that the aforesaid (*the Defendant*) shall recover against the aforesaid (*the Plaintiff*) . . . for his Costs and Charges by him about his Defence in this Behalf sustained, adjudged to the said (*the Defendant*) by the Court of the said Lord the King now here, according to the Form of the Statute in such Case (lately) made and provided, and the same (*the Defendant*) may have Execution thereof, &c.

Q. Of the Continuance Day.

Upon the Writ of *Venire* being sealed, the Sheriff will return a Jury in a Panel annexed to the Writ; upon which Panel you make out a *Distringas Jurator*' after this Manner.

Distringas
Jur' in the
Country.
You only seal
this Writ.

GEORGE the 2d, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of Somersetshire, Greeting: We command you, that you distrain *A. B. C. D. E. F. &c.* (naming all the Jurors with their Additions and Places of

of Abode, as they are set down in the Panel*) the Jury summoned in our Court before us, between A. B. Plaintiff, and C. D. Defendant, by all their Lands and Chattels in your Bailiwick; so that neither they, nor any one by them, intermeddle therein, until you have further Command therein from us, and that you answer to us of the Issues of the same, so that you have their Bodies before us at *Westminster* on *Friday* next after three Weeks of *St. Michael* (the first Day of the next Term,) or before our Justices assigned (appointed) to hold the Assizes in your County, if they shall come before that Time, to wit, on *Monday* (the Day that the Assizes are held on) at (the Place where they are held) in your said County, according to the Form of the Statute in such Case (lately) made and provided, to make the certain Jury of the Country between the Parties aforesaid, of a Plea of *Trespas* (as the Action is) and to hear their Judgment of the many Defaults; and have there then the Names of that Jury and this Writ. **Witness** Sir *William Lee*, Knt. at *Westminster*, the ——— Day of ——— in the ——— Year of our Reign.

King's Bench.
* *When there's a special Jury, but when only a common Jury say, — That you distrain the several Persons named in the Panel to this Writ annexed.*

Anthony and Bigge.

If your *Distringas* be in *London*, you say, *In London. Or before our Trusty and well-beloved Sir Wm. Lee, Knt. our Chief Justice, appointed to hold Pleas in our Court before us, if he shall come before the Time, to wit, on Monday* (the Day after the Sittings, if in Term; but if the Sittings are after Term, then the first Day of the next Term) at *Guildhall, London, by Form of the Statute, (&c.)* If the *Distringas* be in *Middle-InMiddlesex. sex,*

King's
Bench.

sex, then you must say, *Before our Trusty, (&c.) at Westminster aforesaid, in the Great Hall of Pleas there, according to the Form of Statute, (&c.)*

Distring. Jur.
for a Trial at
Bar, by a Spe-
cial Jury.

Gorge, (&c.) To the Sheriff, (&c.) We command you that you distrain *W. W.* of — Knt. *T. L.* of — Esq; (*naming all the Jurors*) being the Jury summoned in our Court before us, (&c. *as above*) so that you have their Bodies before us at *Westminster*, on — next after — to make a certain Jury of the Country between — (&c.)

You must next seal your *Distringas*, and get the Sheriff to return it; and if there be an Occasion for a *Subpœna* for the Witnesses, (as commonly there is) you must make it as afterwards.

Note, That by an Act of 7 & 8 *W. 3.* for the Ease of Jurors, and the better regulating of Juries, It is enacted,

‘ That if the Plaintiff shall not have proceeded
‘ to Trial of the Issue at the first Assizes after the
‘ *Teste* of the Writ of *Habeas Corpora* or *Distringas* with a *Nisi prius*, that then, and
‘ in all such Cases (other than where Views by
‘ Jurors shall be directed) the Plaintiff or De-
‘ mandant, when ever he shall think fit to try
‘ the said Issue at any other Assizes, shall sue
‘ forth, and prosecute a new Writ of *Venire*
‘ *facias* directed to the Sheriff in this Form.

Venire de
novo.

— That you cause to come of *New* (again) before,
(&c.) Twelve free and lawful Men of the Body of
your County; each of whom having Ten Pounds
a Year

a Year at least, in Lands, Tenements, or Rents, King's by whom, &c. and who neither, &c. after the Bench. ancient Manner; ' That is to say, the Writ is ' to be in the same Form as the first, only adding the Words, *de novo*, which Writ being duly returned and filed, a Writ of *Habeas Corpora* or *Distringas*, with a *Nisi prius*, shall issue thereupon for the ancient Fees, as in the Case of a *Pluries*, *Habeas Corpora* or *Distringas*, with a *Nisi prius*; upon which the Plaintiff or Demandant shall and may proceed to Trial, as if no former Writ of *Venire facias* had been prosecuted or filed in that Cause; and so as often as the Case shall require.

And if any Defendant or Tenant shall be minded to bring the Issue to Trial by *Proviso* (when by Course he may) he may, of the issuable Term next preceding such intended Trial to be had at the next Assizes, sue a new *Venire facias* to the Sheriff, in Form aforesaid by *Proviso*, and prosecute the same by Writ of *Habeas Corpora* or *Distringas*, with a *Nisi prius*, as though there had not been any former *Venire facias* sued out or returned in that Cause, and so as often as the Matter shall require. But you must give Notice you intend to try the Cause by *Proviso*.

And the Rules, when you do not try the Cause the same Sitting in *London* or *Middlesex*, and within the Term, you always seal the Record a-new, unless it be at the Sittings after Term, and then the same Record and Jury serve, unless a Juror be withdrawn, which is often done upon a Reference or View, the Sittings after Term being accounted but one Day in Law, though they are many.

Venire & Distringas.

Note, That in *Prohibition* it is said, either Party may carry down the Record; so that it may happen that two be carried at one Time; The Lady the Queen against Sir *James Banks*, about *Trinity*, 3 *Ann.* by the Court; that in Civil Actions the Defendant cannot carry down a Cause to Trial by *Proviso* till after Default in the Plaintiff, except in some special Cases as in *Quare impedit*, *Replevin* and *Prohibition*, to have a Writ to the Bishop, Return or Consultation, and that there cannot be a Trial by *Proviso* in the King's Case, because there can be no Laches in the King, and the Court directed it for a Rule, that the Defendant should never carry an Indictment removed hither by the Prosecutor to Trial without Leave of the Court.

This Act also provides, That Jurors to serve upon the Tales shall be Freeholders or Copyholders of the County, and returned upon some other Panel to serve at the said Assizes, and attending in Court, and may be challenged by Plaintiff or Defendant, Demandant or Tenant, as if they had been impanelled upon a *Venire Facias* to try the Issue.

4 & 5 *Anna*,
cap. 16.

Note; By the Act for Amendment of the Law, reciting that whereas great Delays do frequently happen in Trials by Reason of Challenges to the Arrays of Panels of Jurors, and the Polls, for the Want of Hundredors; for Prevention whereof, 'tis enacted, That every *Venire facias*, for the Trial of any Issue in any Action or Suit in any of his Majesty's Courts of Records at *Westminster*, shall be awarded for the Body of the proper County where such Issue is triable; but this Act is not to extend to Appeals,

Appeals, Indictments, Presentments of Felony, King's
Murder or Treason, nor to Penal Statutes. Bench.

See the late Act for electing a Jury by 5 Geo. 2.
Ballot.

View by J U R O R S.

ALSO, It is Enacted, That when a View of Messuages, Lands or Places in Question, shall be thought necessary by the Court, for the Jurors better Understanding the Evidences that will be given upon the Trials of such Issues, in every such Case, the respective Courts in which such Action shall be depending may order special Writs of *Distringas* or *Habeas Corpora* to issue; by which the Sheriff, or such other Officer to whom the said Writs shall be directed, shall be commanded to have six out of the first twelve of the Jurors named in such Writs, or some great Number of them at the Place in Question, some convenient Time before the Trial, who then and there shall have the Matters in Question shewn to them by two Persons in the said Writs named, to be appointed by the Court; and the said Sheriff, or other Officer who is to execute the said Writs, shall, by a special Return upon the same, certify that the View hath been had according to the Command of the said Writ.

King's
Bench.

*Distringas on the Statute 5 Anne, for
a View by J U R O R S.*

GEORGE, (&c.) To the Sheriff of S. Greeting: We command you, that you distrain the several Persons named in the Panel to this Writ annexed, the Jurors summoned in our Court before us, between *A. B.* Plaintiff, and *C. D.* Defendant, by all their Lands and Chattels in your Bailiwick, so that neither they nor any Person for them intermeddle therewith, until you have further Command in that Behalf from us, and that you answer to us of the Issue of the same, so that you have their Bodies before us at *Westminster*, on *Saturday* next after ——— or before our Justices assigned to hold the Assizes in your County, if they should come before that Time, to wit, on *Wednesday* ——— at *H.* in your County, by Form of the Statute in such Case made and provided, to make a certain Jury of the Country between the Parties aforesaid, of a Plea of Trespass, and to hear their Judgment for many Defaults; and in the mean Time, according to the Form of the Statute in such Case (lately) made and provided*, We command you, that you have six of the first twelve of the Jurors aforesaid, or any greater Number of them, at the Place in Question, upon (*such a Day*) next following, who then shall have a View of the same Place, in the Presence of *E. F.* on the Behalf of the Plaintiff, and *G. H.* on the Behalf of the Defendant, appointed by our Court before us, to shew the Place aforesaid to the Jurors

*See the next
Precedent.

Jurors aforesaid; and in what Manner you shall ^{King's} have executed this our Precept, do you return ^{Bench.} to our Justices on the aforesaid Day, at the Assizes aforesaid, remitting this our Writ to us.
Witness Sir Wm. Lee, Knt. at Westminster,
 the ——— Day of ——— in the ——— Year
 of our Reign.

Anthony and Bigge.

When the Persons are agreed on by the Parties, say ——— *Statute in such Case made and provided, Six of the Persons named in the Panel hereto annexed, to wit, (naming them) being agreed on by the said Parties to view the Place in Question, We command you that you have those six so agreed on at the Place in Question, (&c.)* ^{When the Viewers are agreed on by the Parties.}

When they are appointed by the Master, say ——— *being appointed by the Court to view ———* ^{When appointed by the Master.}

And when appointed by a Judge who is to go the Circuit where the Cause is to be tried, (which sometimes happens when the Master refuses such Persons to be Viewers upon the Objections of either Party) say, ——— *being appointed by ——— one of our Justices of our Court of Common Bench, according to the Form of the Statute in that Case made and provided, to view the Place in Question, ———* ^{By a Judge.}

A Subpœna for Witnesses.

GEORGE the 2d., by the Grace of God, of ^{Put 4 Names} Great Britain, France and Ireland King, in one Sub-Defender of the Faith, &c. To A. B. C. D. E. F. ^{pœna.}
 L 3 and

King's
Bench.

and *G. H.* (naming your Witnesses) Greeting:
We command you, and every of you, strictly
injoining, that (forbearing (or ceasing) all and
singular Business and Excuses whatsoever) you
and every one of you be in your proper Persons

If in *London*, then before
our trusty and well beloved Sir
William Lee, Knt. our Chief
Justice (as before) at Guild-
hall, London.

If in *Middlesex*, — before
our trusty and well-beloved Sir
William Lee, Knt. our Chief
Justice (as before) at West-
minster in the Great Hall of
Pleas there, (&c.)

before our Justices assigned to
hold the Assizes in the County of
Somerset, on *Wednesday* (the Day
the Assizes are held,) next fol-
lowing, at — (the Place where
they are held) in the County
aforesaid, to testify all and sin-
gular these Things, which you
or any of you know in a cer-
tain Action in our Court be-
fore us now depending unde-

termined, between *A. B.* Plaintiff and *C. D.*
Defendant, of a Plea of Trespass (as the Action
is) and to be tried on that Day by a Jury of
the Country; and this ye or any of you are in
no wise to omit, under the Penalty of each of
you of one Hundred Pounds. Witness Sir
William Lee, Knt. at Westminster, the —
Day of — in the — Year of our Reign.

Anthony and Bigge.

You must carry this Subpœna to be signed
by Mr. Hawley, and you leave a Note with
him in this Form:

Note for the
Office.

Somersetshire, J. Subpœna ad testificand'
between *A. B.* Plaintiff and
C. D. Defendant, of a Plea of —
15 Feb. 1739.

Pleadwell.

You

Ticket for Witnesses.

151

You pay 1 s. 8 d. for Signing, and 7 d. for King's
Bench.
Sealing this Writ.

See after, the Form of a *Subpœna ad testificand'* upon a Writ of Enquiry of Damages, and a *Habeas Corpus ad testificand'*.

Upon this *Subpœna* there are Tickets to be filled up, or made after this Manner :

Ticket for Witnesses.

Mr. A. B.

By Virtue of a Writ of *Subpœna* to you directed, and herewith shewed unto you, you are personally to be and appear * before * * For London
or Middle-
sex, then be-
fore Sir Wil-
liam Lee,
Knt. (&c.) his Majesty's Justices of Assize on — next, being the tenth Day of *September*, at Nine of the Clock in the Forenoon of the same Day, at the Court then to be holden at — in the County of — to testify the Truth according to your Knowledge in a certain Cause now depending, and then and there to be tried between *A. B.* Plaintiff, and *C. D.* Defendant, in a Plea of — on the Part of — And hereof you are not to fail, on Pain of One Hundred Pounds. Dated the — Day of — in the — Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. and in the Year of our Lord 1740.

Of sealing Records.

NO T E ; You must get your Record sealed at the *Nisi prius* Office by the *Custos Brevium*, who in Truth ought to make up your Record, and keep Clerks for that Purpose, and you are to pay him for it; but for Dispatch, the Clerk or Attorney makes them up himself.

Notice of
Trial.

You are also to give the Defendant's Attorney Notice of Trial in this Manner, for *London* or *Middlesex*,

Take Notice of Trial in this Cause for the
Sittings after this present Trinity Term, on —
Day of — at —

When eight
Days, and
when fourteen.

And Note ; There must be eight Days Notice given to the Defendant's Attorney of any Trial in *London* or *Middlesex*, unless the Defendant lives above forty Miles from *London*, and then 'tis fourteen Days.

But eight Days Notice of Trial at the Assizes 'tis said is good, let the Defendant live where he will, but not upon an old Issue.

When a
Term's No-
tice.

If a Cause have continued four Terms without any Prosecution before Issue joined, the Defendant is to have a Term's Notice to plead, &c. before Judgment can be entered by Default ; if after Issue joined, a Term's Notice before Trial ; or if after Judgment obtained by Default, a Term's Notice of executing a Writ of Inquiry.

When the
Cause to be
entered.

If Notice of Trial be given in *London* or *Middlesex*, and the Cause be not entered in the Lord Chief Justice's Book two Days before the Day that it is to be tried, the Marshal shall

shall enter a *Ne recipiatur* at the Request of King's the Defendant or his Attorney. And there is Bench. a Rule made, that the Cause shall be entered four Days before Trial. *Ne recipiatur.*

And if the Plaintiff give Notice to the Defendant, that he will try his Cause on a certain Day within Term, altho' it be not tried at the Day appointed, yet he is not bound to give new Notice of Trial, but may try it the next Sitting in the same Term, upon two Days Notice; but if not tried the next Sitting, then Notice to be given as at first.

If there are so many Causes to be tried on the Day appointed, that the Cause cannot be tried, and it is made a *Remanet*, the Plaintiff need not give new Notice, but the Defendant must attend till it can be tried.

Two Days Notice of a Countermand of Trial is sufficient, unless for the Assizes, and the Countermand is given to the Agent in Town, then it ought to be four Days before the Commission-day. *Countermand of Notice of Trial.*

Costs for not proceeding.

ALSO if the Plaintiff proceeds not to Trial after Notice, (and no Countermand) then the Defendant shall have Costs taxed by the Secondary, upon Affidavit of Attendance and Costs, which Affidavit may be in the Manner following, (*to wit,*)

King's
Bench.

*In the
King's Bench.*

Between { *A. B. Plaintiff*
 and
 C. D. Defendant.

C. D. of — the Defendant in this Cause, and J. B. of — his Attorney, severally make Oath as follows: And first, the said C. D. for himself saith, that pursuant to Notice of Trial given by the Plaintiff (or his Attorney) in this Cause, for the last Assizes held at T. in the said County, he this Deponent and the said J. B. together with — Witnesses, which this Deponent believes were material or necessary in this Cause, to wit, E. F. of — (&c.) attended at the said Assizes, and that all the said Witnesses took a Journey from their respective Habitations to T. aforesaid being upwards of — Miles, and were from Home on the said Account — Days, and that he hath paid for Horse-hire and other necessary Expences for himself, his said Attorney and his said Witnesses, on their said Journeys and at the said Assizes, the Sum of — And the said Deponent J. B. for himself saith, that he paid (such and such Sums, as Fees in Court, to Counsel, &c. as the Case is,) And the said Deponents severally say, that the said Plaintiff did not proceed to Trial at the said Assizes, neither have they received any Countermand of the Notice of Trial as aforesaid given in this Cause.

Sworn, &c.

C. D.
J. B.

Or

Or if a Countermand was given at the Assizes, say, King's Bench.

Neither heard they of any Countermand thereof until Monday the — Day of — last, at Night, &c.

But *Note* ; This is done upon a Motion in the *King's Bench*, but without Motion in the *Common Pleas*.

Note ; At the Assizes you get the Sheriff to return the *Distringas* of the Jury, and then you deliver the Record to the Judge's Marshal.

The next Thing is to draw the *Breviates Briefs* for the Counsel, wherein great Knowledge and Experience is required, especially to know what Proof is requisite to be made, and sometimes what is Evidence, and what not, and to set forth the Case summarily, and yet perspicuously and fully, and sometimes also what is supposed will be objected by the other Side. *See some Directions after Declaration in Ejectment.*
But our Clerk will be no further concerned therein at first, than to write them fairly over, so that we shall proceed how to enter up Judgment after Trial.

POSTEA.

WHEN the Trial is over, and the Court Fees paid, if your Action be laid in *London* or *Middlesex*, the Associate will deliver you your Record, with the *Distringas*, and the Panel or Names of the Jury thereunto annexed, upon the Back of which Panel he writes the Substance of the Verdict, and the Costs given by the Jury, which you must take Care to fix to your Record, that it may not be lost;
then

King's
Bench.

then get the Record stampt with a new double 2 s. 6 d. Stamp, and scrape or rub the Back of the Record with a Pumice Stone, that it may be fit to write on, and about two Fingers from the Top, with a Margent about three or four Fingers broad, begin your *Postea* longways, and not as you write your Record; the Substance and Meaning of which *Postea* is this, that afterwards the Plaintiff and Defendant came by their Attornies before the Lord Chief Justice, or Judge of the Assize, (*as the Case is,*) and the Jury was sworn, &c. and then set forth what Verdict they found, and what Costs they gave. The Form of this *Postea* followeth:

The Form of a Postea by Default with Tales.

Afterwards at the Day and Place within contained before Robert Lord Raymond Chief Justice within written, having associated to him J. J. Gentleman, (*that is the Judge's Associate, who delivers you the Record,*) by Form of the Statute, &c. the within named A. B. (*to wit, the Plaintiff,*) comes by his Attorney within contained, and the within named C. D. (*the Defendant*) altho' solemnly required does not come, but makes Default; therefore let the Jurors of that Jury within mentioned be taken against him by Default, and the Jurors of that Jury being summoned, certain of them, to wit, E. F. G. H. (*reciting the Names of so many of the Jury of the principal Panel which is annexed to your Distringas, as you shall find there to have been sworn; for against every Man's Name*
that

that hath been sworn there is writ Sworn, then King's
 say,) come and being sworn on that Jury, (but Bench.
 if twelve of the Jury so returned do not appear
 to be sworn, then the Counsel for the Plaintiff
 before the Trial prayeth the Judge to grant a
 Tales de Circumstantibus, that is, as many of
 other Persons then present as may fill up the
 Number; and they write upon the Panel, The
 Names of the Jury appointed a-new according
 to the Form of the Statute, (&c.) and then
 the Names of those Talesmen, and they are also
 sworn, and stand with the rest of the Jury;
 I say, if there be a Tales, as it often happens,
 then after being sworn upon that Jury you
 must say,) And because the rest of the Jurors
 of the same Jury do not appear, therefore o-
 thers that are present being chosen for this Pur-
 pose, by the Sheriff of London, (or Middlesex,
 as the Case is) within written, at the Request of
 the aforesaid A. B. (the Plaintiff) and by Com-
 mand of the Chief Justice aforesaid, are ap-
 pointed a-new, whose Names are affixed in the
 Panel within written, according to the Form of
 the Statute in such Case made and provided,
 which said Jurors so appointed a-new, to wit,
 F. G. &c. (here recite all the Talesmen) being
 likewise summoned come, and together with
 the other Jurors aforesaid before impanelled
 and sworn being called, elected, tried, and
 sworn to speak the Truth of the Matter within
 contained, upon their Oaths say, that the
 aforesaid C. D. (the Defendant) undertook
 and promised in Manner and Form as the
 aforesaid A. B. (the Plaintiff) hath within
 complained against him, and they assess the
 Damages of the said A. B. by reason of the
 not

King's
Bench.

not performing the Promises and Undertakings within written, besides his Costs and Charges by him put unto about his Suit in this Behalf to twenty Pounds, and for those Costs and Charges to fifty-three Shillings and four Pence. (*the usual Costs given by the Jury,*) Therefore, (&c.)

This is the Form of a *Possea* in an Action of the Case upon Promise, wherein there is a *Tales* and a Verdict for the Plaintiff by Default, that is, when the Defendant, after the Jury is returned, or ready to give in their Verdict, doth not appear, being called, knowing the Verdict will certainly be against him.

There are several other Forms of *Posseas*, of which it is necessary to add some Precedents.

The Form of a Possea for the Plaintiff upon Non assumpsit with a Tales, where the Defendant appears and does not make Default.

Afterwards, at the Day and Place, (&c.) come as well the within named *A. B.* as the within written *C. D.* by their Attornies within contained, and the Jurors of the Jury, whereof Mention is within made, being summoned, certain of them, to wit, *E. F. G. H. &c.* come, and being sworn on that Jury, and because the rest of the Jurors of the same Jury do not appear, therefore others that are present being chosen, being elected for this Purpose

Purpose by the Sheriff of London within writ- King's
ten, at the Request of the said *A. B.* and by Bench.
the Command of the Chief Justice aforesaid,
are appointed a-new, whose Names are affixed
in the Panel within written, according to the
Form of the Statute in such Case made and
provided, which said Jurors so appointed of
new, to wit, *J. L. L. M. (&c.)* being like-
wise summoned, together with the other Ju-
rors before impanelled and sworn, being cal-
led, elected, tried, and sworn to speak the
Truth of the Matter within contained, upon
their Oaths say, that the aforesaid *C. D.* under-
took and promised in Manner and Form as the
aforesaid *A. B.* within complains against him,
and they assess the Damages of the said *A. B.*
by reason of the not performing the Promises
and Undertakings under written, over and
above his Costs and Charges by him put to
about his Suit in this Behalf, to One Hundred
Pounds, and for those Costs and Charges to
fifty-three Shillings and four Pence. There-
fore, (&c.)

For the Defendant upon Non assumpsit.

Afterwards, at the Day, (&c.) say up-
on their Oath, that the aforesaid *C. D.*
did not undertake and promise in Manner and
Form as the aforesaid *C. D.* by his Pleading
hath within alledged, (&c.)

For

King's
Bench.

*For the Plaintiff upon Non Culp. in
'Trover.*

Afterwards, at the Day, (&c.) say upon their Oaths, That the aforesaid C. D. is guilty of the Premisses within written, in Manner and Form as the aforesaid A. B. hath within declared against him; and they assess the Damages of the said A. B. on the Occasion within written, besides his Costs and Charges by him put to about his Suit in this Behalf to One Hundred Pounds; and for those Costs and Charges to fifty-three Shillings and four Pence. **Therefore, &c.**

In Detinue for the Plaintiff.

Afterwards at the Day, (&c.) say upon their Oaths that the aforesaid C. D. detains from the aforesaid A. B. the underwritten Four Quarters of Corn, as the aforesaid A. B. within complains against him; and further, the Jurors say upon their Oaths, That the said four Quarters of Corn were worth Four Pounds, and they do assess the Damages of the said A. B. by Reason of the detaining the aforesaid four Quarters of Corn to Twenty Shillings, and for those Costs and Charges to Fifty Three Shillings and Four Pence. **Therefore, (&c.)**

The Judgment in this is remarkable, therefore I add it here, Therefore it is considered, that the aforesaid A. B. do recover against the aforesaid C. D. the aforesaid four Quarters, or the

the aforesaid — Pounds for the Value of the same and his Damages aforesaid, &c. King's Bench.

Another in Detinue for the Plaintiff.

Afterwards at the Day, (&c.) say upon their Oaths, That the aforesaid C. D. detains from the aforesaid A. B. the within written Silver Cup, in the Declaration within written, in Manner and Form within specified, as the aforesaid A. B. within complains against him, and they do assess the Damages of the said A. B. by Reason of detaining that Silver Cup, besides his Costs and Charges by him put to about his Suit in this Behalf to ten Shillings, if the said A. B. can have the said Silver Cup delivered to him, and for those Costs and Charges, to fifty-three Shillings and Fourpence; and if the said A. B. cannot have the said Silver Cup delivered to him, then the Jurors aforesaid assess the Damages of the said A. B. for the Value of the Silver Cup aforesaid, over and above his Costs and Charges aforesaid, by these Jurors, in Form aforesaid assessed, to Five Pounds, (&c.)

For the Plaintiff in Debt upon Conditions performed.

Afterwards at the Day, (&c.) say upon their Oaths, That the aforesaid C. D. did not pay to the aforesaid A. B. upon the within written Feast-Day of St. John the Baptist, which was in the Year of our Lord 1730 within written, in the Condition within written,

M

the

Knig's
Bench.

the within written One Hundred Pounds, which to him at or upon the same Day he ought to have paid, according to the Form and Effect of the Condition aforesaid, in Manner and Form as the aforesaid *C. D.* within by his Pleading hath alledged; and they do assess the Damages of the said *A. B.* on that Occasion, over and above his Costs and Charges by him put to about his Suit in this Behalf, to Fourpence, and for those Costs and Charges to Fifty-three Shillings and Fourpence. *Therefore, &c.*

*For the Plaintiff upon Solvit ad Diem
pleaded to a penal Bill.*

Afterwards at the Day, (*&c.*) say upon their Oaths, that the aforesaid *C. D.* did not pay to the aforesaid *A. B.* the within mentioned One hundred Pounds, upon the within written Tenth Day of the then Instant *October*, according to the Form and Effect of the Bill obligatory within mentioned, in Manner and Form, as the aforesaid *A. B.* within complains against him; and they assess the Damages of the said *A. B.* by Reason thereof, over and above his Costs, (*&c.*)

For the Plaintiff upon Non est factum.

Afterwards at the Day, (*&c.*) say upon their Oaths, that the within written Writing obligatory for the within written One hundred Pounds mentioned in the Declaration within written, is the Deed of the aforesaid *C. D.* as
the

the aforesaid *A. B.* within complains thereof against him; and they assess the Damages of the said *A. B.* on that Occasion, over and above his Costs and Charges by him put to about his Suit in this Behalf, to Four Pence, and for those Costs and Charges to Fifty-three Shillings and Fourpence. Therefore, &c.

King's
Bench.

*For the Plaintiff upon Per Dures
pleaded.*

Afterwards at the Day, (&c.) say upon their Oaths, That the within written *C. D.* the Day and Year in the Declaration within specified, was of his own Right at large and not in any Prison, and the Writing obligatory within mentioned by his mere free Will made sealed, and as his Act to the same *A. B.* then and there delivered, and not by Force and Hardship (*Duress*) of that Imprisonment, in Manner and Form as the aforesaid *C. D.* within by his Pleading hath alledged; and they assess the Damages of the said *A. B.* by reason of the detaining of that Debt within mentioned, besides the Costs and Charges by him put unto about his Suit in this Behalf, to Twelve Pence, and for these Costs and Charges to Fifty-three Shillings and Fourpence. Therefore, (&c.)

King's
Bench.

*For the Plaintiff in an Assault and
Battery upon Non Culp'.*

Afterwards at the Day, (&c.) say upon their Oaths, That the aforesaid C. D. the Day, Year and Place within specified, upon the aforesaid A. B. made an Assault, and him did beat, wound and evilly treat in Manner and Form, as the said A. B. hath within declared against him; and they assess the Damages of the said A. B. by reason of the Premisses within contained, over and above his Costs and Charges by him put unto about his Suit in this Behalf, to Ten Pounds, and for those Costs and Charges to Fifty-three Shillings and Four Pence. **Ther-fore,** (&c.)

*For the Plaintiff upon Son Assault De-
meine.*

Afterwards at the Day, (&c.) say upon their Oaths, That the aforesaid C. D. the Day and Year within specified, with Force and Arms within mentioned, of his own proper Wrong, and without the Cause by him the said C. D. within alledged upon the said A. B. at R. aforesaid, made an Assault, and him did beat, wound, and evilly treat, so that his Life was despaired of, against the Peace of the Lord the King, as the aforesaid A. B. within complains against him; and they assess the Damages of the said A. B. occasioned by the aforesaid Trespass, besides his Costs and Charges by

by him put unto about his Suit in this King's Behalf, to Forty Shillings, and for those Costs Bench. and Charges to Fifty-three Shillings and Four Pence. *Therefore, (&c.)*

The Continuances of these Posteas upon the Roll are after this Manner. After the joining of the Issue there, &c. you add thus.

Afterwards the Process therein is continued between the Parties aforesaid, of the Plea aforesaid, by the Jury appointed thereof between them in Respite before the Lord the King at *Westminster*, until *Monday* next after the Octave of the Purification of the Blessed *Mary* then next following, unless the trusty and well-beloved Sir *Wm. Lee*, Knt Chief Justice of the said Lord the King, appointed to hold Pleas in the Court of the said Lord the King before the King himself, come before that Time, to wit, on *Saturday* next after the Octave of the Purification of the Blessed *Mary*, at *Guildhall, London*, by Form of the Statute, &c. for want of Jurors, &c. At which Day before the Lord the King at *Westminster* comes the aforesaid *A. B.* by the aforesaid *E. F.* his Attorney aforesaid, and the aforesaid Chief Justice, before whom, &c. sent here his Record had before him, in these Words, to wit, **Afterwards** at the Day and Place, (&c.) as before unto. *Therefore, (&c.)*

See after for entring up the Judgment.

King's
Bench.

If at the Assizes, say,

Afterwards Proceſs therein is continued, (*&c. as before unto,*) Unless the Juſtices of the Lord the King appointed to hold the Affizes in the County aforeſaid ſhall come before that Time, to wit, on *Tuesday* the Twenty-second Day of *August*, at *S.* in the County aforeſaid, by Form of the Statute, *&c.* for Deſect of Jurors, *&c.* At which Day before the Lord the King at *Westminster* comes the aforeſaid *S.* by his Attorney aforeſaid, and the aforeſaid Juſtices of the Lord the King at the Affizes, before whom, *&c.* ſent here their Record before them had in theſe Words, to wit, **A**fterwards at the Day and Place within contained, (*&c.*)

For the Plaintiff in Ejectment.

Afterwards, to wit, at the Day and Place within contained, before *Robert* Lord *Raymond*, Chief Juſtice within written, having associated to him *John Juce*, Gentleman, by Form of the Statute, *&c.* comes as well the within named *A. B.* as the within written *C. D.* by their Attornies within contained, and the Jurors of the Jury within mentioned being ſummoned likewise come, who to ſpeak the Truth of the within contained being called, choſen, tried and ſworn, ſay upon their Oaths, That the aforeſaid *C. D.* is guilty of the Treſpaſs and Ejectment within written in
Manner

Manner and Form, as the aforesaid *A. B.* with- King's
in complains against him, and assels the Da- Bench.
mages of the said *A. B.* on Occasion of that
Trespas and Ejectment, besides his Cost and
Charges by him put unto about his Suit
in that Behalf, to Twelve Pence, and for
those Costs and Charges to Fifty-three Shil-
lings and Four Pence. Therefore, (&c.)

For the Defendant in Ejectment.

Afterwards, to wit, the Day, (&c.)
say upon their Oath, That the aforesaid
C. D. is not guilty of the Trespas and Eject-
ment within specified, as the same *C. D.* with-
in by Pleading hath alledged — *And the Judge- Judgment.*
ment is, — Therefore it is considered,
That the aforesaid *A. B.* shall take nothing by
his *Claim* aforesaid, but for his false Claim may
be thereof in Mercy; and the aforesaid *C. D.*
may thereof go without a Day.

*For the Plaintiff in Ejectment where
the Jury find the Defendant Guilty
as to a fourth Part, and as to the rest
not Guilty.*

Afterwards at the Day and Place, (&c.)
tried and sworn as to the within written
Trespas and Ejectment, in the fourth Part of
all and singular the Tenements within-written,
with the Appurtenances, (the same Tenements
to be divided on this Occasion into four Parts)
say upon their Oath, that the aforesaid *C. D.*

King's
Bench.

is thereof Guilty, in manner and Form as the
aforesaid *A. B.* within complains against him,
and assess the Damages of the said *A. B.* by
Occasion of that Trespass and Ejectment, over
and above his Costs and Charges by him put
unto about his Suit in this behalf to Six Pence,
and for those Costs and Charges to Forty Shil-
lings; and as to any Trespass and Ejectment in
the three other Parts of the Tenements afore-
said, with the Appurtenances, (the Residue of
all the Tenements aforesaid on this Occasion to
be divided into four Parts) the Jurors aforesaid
further say upon their Oaths aforesaid, that
the aforesaid *C. D.* is not Guilty, as the said
A. B. on this Occasion in his pleading hath
within alledged, (&c.)

*For the Defendant where the Plaintiff
is nonsuited.*

Afterwards, at the Day and Place with-
in contained, before *Robert Lord Ray-
mond*, Chief Justice of the Lord the King,
having associated to him ——— Gentleman,
by Form of the Statute, &c. comes as well the
within named *A. B.* Plaintiff, as the within
written *C. D.* Defendant, by their Attornies
within contained; and the Jurors of the Jury
within mentioned being summoned likewise
come, who to the Truth of the within con-
tained being called, chosen, tried and sworn,
and from the Bar here retired to consult of
their Verdict to be given, and therein between
themselves consulted and agreed, and to give
that Verdict they returned to the Bar here; up-
on

on which the aforesaid *A. B.* although solemnly called does not come, nor further prosecutes his within written Bill against the aforesaid *C. D.* Therefore, (&c.)

King's
Bench.

For the Plaintiff upon Plene Administravit.

Afterwards, at the Day, (&c.) say upon their Oaths, that the aforesaid *C. D.* on the Day of obtaining the Bill within specified, to wit, the Twenty-third Day of *January* in the Year, (&c.) had divers Goods and Chattels, which were of the within written *J. S.* (to wit, the *Testator* or *Intestate*) and divers Goods and Chattels which were the aforesaid *J. S.*'s at the Time of his Death, in the Hands of the aforesaid *C. D.* to be administered; and they give Damages, (&c. *ut supra*).

Another in Case.

Afterwards, at the Day, (&c.) say upon their Oaths, That the aforesaid *C. D.* the Twenty-third Day of *January* in the Year, (&c.) had divers Goods and Chattels, which were the aforesaid *J. S.*'s at the Time of his Death, in his Hands to be administered, to the Value of One Hundred Pounds in the Declaration within specified, in Manner and Form, as the aforesaid *A. B.* hath within alledged, and assess the Damages of the said *A. B.* by reason of the not performing the Promises and (*Under-takings*) aforesaid, besides his Costs and Charges by

King's
Bench.

Judgment.

by him put to about his Suit in this Behalf, to — and for those Costs and Charges to Fifty-three Shillings and Fourpence. — *The Judgment is, — It is therefore considered,* That the aforesaid *A. B.* do recover against the aforesaid *C. D.* his Damages aforesaid, by the Jury aforesaid in Form aforesaid assess'd, and also Twenty Pounds and Ten Shillings for his Costs and Charges to him the said *A. B.* by the Court of the Lord the King now here on his Assent of Increase adjudged, which said Damages amount in the whole to — to be levied of the Goods and Chattels which were the aforesaid *J. S.*'s in the Hands of the aforesaid *C. D.* to be administred, if he hath so much in his Hands to be administred; and if he hath not so much in his Hands, then the aforesaid — Pounds for the Costs and Charges aforesaid, to be levied of the proper Goods and Chattels of the said *C. D.* and the aforesaid *C. D.* in Mercy, &c.

Posteas of Records at the Assizes.

Afterwards, at the Day and Place within contained, before *Robert Lord Raymond*, Chief Justice of the Lord the King of the Bench, and * *S. L. Esq;* to the said Lord *Raymond*, and *J. P. Knight*, one of the Justices of the said Lord the King, appointed to hold the Assizes in the County of *B.* by Form of the Statute, &c. for this present Turn associated (the aforesaid *J. P.* not being expected,) by Virtue of the Writ of the said Lord the King of *Si non omnes*, &c. comes the within named *S. P.* by his

* *The Judges Associate, who returns these Posteas.*

his Attorney within contained, and the within King's written R. O. Gentleman, altho' solemnly called, Bench. does not come, but makes Default; therefore let the Jury within mentioned be taken against him by Default, and the Jurors of that Jury being solemnly called come, who to the Truth of the within contained being sworn, say upon their Oaths, That the aforesaid R. O. undertook and promised in Manner and Form, as the aforesaid S. P. within complains against him, and they assess the Damages of the said S. P. on the Occasion within specified, over and above his Costs and Charges by him put unto about his Suit in this Behalf, to Four Pounds, and for those Costs and Charges, to Forty Shillings. Therefore, &c. — *The Judgment here-*

upon is, — Therefore it is considered, that the aforesaid S. P. do recover against the aforesaid R. O. the Damages aforesaid assessed by the Jury aforesaid in Manner aforesaid, and also Ten Pounds for his Costs and Charges aforesaid adjudged to the said S. by the Court of the said Lord the King now here, by his Assent, of Increase, which said Damages amount in the whole to Sixteen Pounds; and the aforesaid R. in Mercy, &c.

Judgment.

Mercy.

Upon an Issue, as well to try the Issue, as to inquire what Damages, upon a Demurrer.

Afterwards, at the Day and Place within contained, (*&c. as before unto,*) Who to the Truth of the within contained being called, chosen, tried and sworn, as to the Want of

King's
Bench.

of Reparation of the Chancel within specified, say upon their Oaths, that the aforesaid Dean and Chapter demised to the within named *G. H.* the Chancel within specified in Manner and Form, as the aforesaid Dean and Chapter by their Declaration within thereof have alledged; and they assess the Damages of the said *D.* and *C.* by Reason of the Breach of those Covenants in the Issue within written joined between the said Parties, besides their Costs and Charges by them put to about their Suit in this Behalf, to Two Hundred Pounds, and for those Costs and Charges to Forty Shillings; and as to the inquiring what Damages the aforesaid *D.* and *C.* have sustained, by Reason of the Breaking the Covenants within written, whereupon the Parties aforesaid have put themselves upon the Judgment of the Court, if it shall happen, that Judgment for the aforesaid *D.* and *C.* be therein against the aforesaid *C. D.* then the same Juries say upon their Oath, that the aforesaid *D.* and *C.* have sustained Damages on that Occasion to One Hundred Pounds: **Therefore** it is considered, That the aforesaid *D.* and *C.* do recover against the aforesaid *C. G.* the Damages aforesaid, by the Jury aforesaid assessed in Form aforesaid, and also Eleven Pounds Six Shillings and Eight Pence for the Costs and Charges aforesaid adjudged to the said *D.* and *C.* by the Court of the said Lord the King now here, on their Assent, of Increase; which said Costs amount in the whole to One Hundred and Twenty-three Pounds Six Shillings and Eight Pence; and the aforesaid *C.* in Mercy, &c.

Judgment.

Mercy.

Upon

King's
Bench.

Upon a special Verdict.

Afterwards Proceſs is thereupon continued, (&c.) Afterwards at the Day and Place within contained before J. P. Eſq; one of the Juſtices of the Lord the King of the Bench, and S. D. Serjeant at Law, Juſtices of the ſaid Lord the King, appointed to hold the Aſſizes in the Countrey of D. by Form of the Statute, &c. came as well the within named C. D. as the within written R. R. by their Attornies within contained; and the Jurors of the Jury whereof Mention is within made being called likewise come, who to the Truth of the within contained being called, choſen, tried and ſworn, ſay upon their Oaths, That before the Treſpaſs and Ejectment in the Lands in the Declaration within written mentioned, one J. H. was ſeiſed of the ſaid Lands in his Demefne as of Fee, and being ſo ſeiſed made his laſt Will and Teſtament in Writing (*among other Things*) of the Lands within written, by the Name of a certain Intache in theſe Words: *I give and bequeath unto Anne Harrifon, Daughter of my Son-in-Law Thomas Harrifon, my Intache in Hopefield, if my Son Thomas Hyblin happen to have no Iſſue Male, after the Deceafe of my Wife, and if my Son Thomas Hyblin have Iſſue Male, then my Will is, that the ſaid Anne ſhall have five Pounds paid her in lieu of the ſaid Intache:* And afterwards the aforeſaid J. died, having Iſſue the aforeſaid Thomas Hyblin, who had Iſſue Male of his Body lawfully iſſuing one Richard Hyblin: And the Jury farther upon

King's
Bench.

upon their Oath aforesaid say, That *Anne* the Wife of the aforesaid *John Hyblin* out-lived the said *John*, and afterwards died; and that the aforesaid five Pounds mentioned in the last Will aforesaid was tendered to the aforesaid *John Harrison* after the Death of the aforesaid Issue Male, and refused by the same *Anne Harrison*: And farther the Jurors aforesaid upon their Oath aforesaid say, That one *Anne* and *Elizabeth Hyblin* are the Sisters and Heirs of the aforesaid *Richard*, and that the aforesaid *Richard* the Son of the aforesaid *Thomas* died without Issue Male of his Body lawfully issuing, and that the aforesaid *Anne Harrison* entered on the Lands within written, and the same demised to the within named *G. A. (the Plaintiff)* by Virtue of which the aforesaid *G.* entered on the within written Lands, and was possessed thereof until the within written *R. R.* entered in and upon the Possession of the said *G.* and him ejected from his Possession in Manner and Form as the within written *G.* hath farther declared against him, and that the aforesaid *R. R.* the now Defendant, is Guardian of the aforesaid *Anne* and *Elizabeth Hyblin*, and hath entered for their Use; but whether upon the whole Matter aforesaid, by the Court aforesaid in Form aforesaid plainly found, the aforesaid *R. R.* is guilty of the Trespass and Ejectment aforesaid or not, the Jurors aforesaid do not know, and thereupon pray the Advice of the Justices and Court here; and if upon the whole Matter aforesaid in Form aforesaid plainly found, it shall seem to the Justices and Jury here, that the aforesaid *R. R.* is guilty of the Trespass and Ejectment within written, then the

Jurors aforesaid upon their Oaths aforesaid ^{King's} say, That the aforesaid R. R. is guilty of the ^{Bench.} Trespass and Ejectment within written, in Manner and Form as the aforesaid G. A. within complains against him; and they assess the Damages of the said G. A. by reason of the Trespass and Ejectment, besides his Costs and Charges by him put to about his Suit in this Behalf, to six Pence, and for those Costs and Charges to forty-three Shillings and four Pence: But if upon the whole Matter aforesaid in Form aforesaid plainly found, it shall appear to the Justices and Court here, that the aforesaid R. R. is Not guilty of the aforesaid Trespass and Ejectment then the Jurors aforesaid upon their Oath aforesaid say, That the aforesaid R. R. is Not guilty of the Trespass and Ejectment aforesaid, as the same R. within for himself in Pleading hath alledged; and because the ^{The Court is} Court of the said Lord the King now here is ^{not advised.} not yet determined to give their Judgment of and upon the Premisses, a Day is thereupon given to the aforesaid G. A. that he may be before the Lord the King at *Westminster* on *Wednesday* next after the Octave of the *Holy Trinity*, then to hear their Judgment, because the Court of the said Lord the King here is not yet advised (*and so is continued until Trinity Term next following*): At which Day before the Lord the King at *Westminster* the Parties aforesaid come by their Attornies aforesaid; upon which having seen, and by the Court of the said Lord the King now here fully understood all and singular the Premisses, and upon mature Deliberation had thereupon, It is considered, that the aforesaid G. A. ^{Judgment.} do

King's
Bench.

do recover against the aforesaid *R. R.* his Term aforesaid as yet to come, of and in the Tenements aforesaid with the Appurtenances, and his Damages aforesaid, by the Jury aforesaid assessed in Form aforesaid, and also thirteen Pounds six Shillings and eight Pence for his Costs and Charges adjudged to the said *G. A.* by the Court of the said Lord the now King, on his Assent, of Increase, which said Damages amount in the whole to sixteen Pounds eight Shillings; and let the aforesaid *R. R.* be taken, &c.

There are several other Forms of *Posteas*, as the Action, Verdict, and divers Sorts of Proceedings require, which would take up too much Room in this small Treatise; these are inserted as being of general Use, and to give Insight into the Forms and Methods of drawing them up; and as it was observed before, if the Trial be at the Assizes in the Country, the Judge's Associate ingrosseth the *Postea* on the Record; and so in those Cases it is not the Attorney's Business, he only carrieth it to the Master to have Costs taxed, and then enter up Judgment according to the former and following Instructions.

*Postea to be
marked.*

When you have the *Postea* ingrossed, carry it to the Clerk of the *Posteas* to be marked, and he will write on the Top of your *Postea* the Day of the Month *D.* by — for which you pay him four Pence, then carry your *Postea* to the Clerk of the Rules, and desire him to give a Rule upon the *Postea*, for which you must pay him one Shilling and four Pence; that Rule will be out in four Days, if

*Four Days are
allowed for
Arrest of
Judgment.*

Sunday doth not intervene, and then five ; for King's the Defendant hath always four Days to move Bench. the Court in Arrest of Judgment, if he hath any Cause to shew ; as neither he nor his Attorney had Notice of Trial, or that the Record differs from the Declaration pleaded unto in some material Point ; and several Causes may be alledged, of which generally Affidavit ought to be made.

When the Rule is out, if the Judgment be not arrested, you must now have the Record stamped on the Back with a double Half Crown Stamp, and carry it to the Master of the Office, Mr. *Clark*, and he will tax your further Costs, which are called Costs of *Increase*, and then is your Judgment fit to be entered.

But if your Trial be at the Assizes in the *Postea upon a* Country, then you do not take away the Re-*Trial at the* cord and *Distringas* with you, but the Ass-*Assizes.*ciate keeps it till the next Term, indorses the *Postea* upon it, for which he receives his Fee at the Trial, and you are to call upon him a little before the Beginning of the ensuing Term, to put him in Mind to have the *Postea* ready, and then you must proceed to have it marked, and a Rule given and Judgment signed as before ; yet for Expedition you will have Occasion to enter the *Postea* yourself.

King's
Bench.

How to enter Judgments With Trial on the Roll.

NOW for the Entering the Judgment, Care must be taken that no Error be committed: The Rolls to enter them upon are delivered out by Mr. *Billingſly* Stationer in *Chancery-lane*, or by Mr. *Hawley* for him. You must make a small Margin about a Thumb's Breadth, then begin about a Span from the Top of the Roll in large Hand, in these Words, *Also of the Term of St. Hillary*, (as the Term is). *Witness Sir William Lee, Knt.* Then next it is usual, according to a late Rule, to write the Warrant of Attorney next, after this Manner, (to wit,)

Warrants of
Attorney on
the Roll.

By Stat. 4 &
5 Ann. the
Attorney for
the Plaintiff
shall file his
Warrant of
Attorney the
same Term he
declares, and
the Defen-
dant the same
Term be ap-
pears.

London, ſſ. A. B. puts in his place J. C. his Attorney, against C. D. of a Plea of Trespass on the Case, (or as the Action is, as of a Plea of Debt, (&c.) If there be an *Alias dict'* in the Declaration, your Warrants of Attorney must be so too, (and so if there be Executors or Administrators,) then under the first you enter another for the Defendant, thus:

London, ſſ. C. D. (the Defendant) puts in his place E. F. his Attorney, against A. B. in the Plea aforesaid, (some put it at the Suit of A. B. in the Plea aforesaid, which seems the better Way,) then within Half an Inch under begin to enter the Judgment thus:

London, to wit, **BE** it remember'd, &c.
(as before. So recite the whole Record, till you come to the End of the Issue

Issue, and then say,) * Afterwards Process is King's
 therein continued between the Parties afore-Bench.
 said of the Plea aforesaid, by the aforesaid * See before
 Jury put thereof between them, in respite be- for Continu-
 fore the Lord the King at Westminster, until, ances of Po-
 Wednesday, &c. (as it is in the Jurata of the steas.
 Record,) unless the trusty and well-beloved
 Sir William Lee, Knt. Chief Justice of the Lord
 the King, assigned to hold Pleas in the Court
 of the said Lord the King before the King him-
 self, shall before (that Time, to wit,) on Wednes-
 day, (as in the Jurata,) at Guildhall, London,
 by Form of the Statute, come through Default
 of the Jurors, &c. At which Day before the
 Lord the King at Westminster came the afore-
 said A. B. by his Attorney aforesaid, and the
 aforesaid Chief Justice, before whom, &c. sent
 here his Record had before him, in these
 Words, to wit, Afterwards at the Day and Judgment for
 Place, &c. there recite the whole Postea ver- the Plaintiff.
 batim, * It is therefore considered, * See before a-
 that the aforesaid A. B. do recover against mongst the
 the aforesaid C. D. his Debt aforesaid, and his Postcas for
 Damages aforesaid by the Jury aforesaid as- Forms of
 sessed in Form aforesaid, and also seven Pounds Judgments.
 sixteen Shillings and eight Pence, (to wit, the
 Cost of Increase taxed by the Master) for his
 Costs and Charges aforesaid, adjudged by the
 Court of the said Lord the King now here,
 to the said A. B. on his Assent, of Increase,
 which said Costs amount in the whole to thirty
 Pounds, (summing up the whole) And the a-
 foresaid C. D. in Mercy, &c. and write Mercy
 in the Margin. But in Ejectment and in Tres-
 pass, and upon Non est factum pleaded, there
 instead of, and the aforesaid C. D. in Mercy,

King's
Bench.

you must say, and let the aforesaid C. D. be taken, &c. and write taken in the Margin.

Judgment in Debt against Defendant.

Therefore it is considered, that the aforesaid *A.* recover against the aforesaid *C.* his Debt aforesaid, and the Damages aforesaid assessed by the Jury aforesaid in Form aforesaid; and also 4 *l.* for his Costs and Charges aforesaid, adjudged by the Court of the said Lord the King now here, to the said *A.* by his Assent, of Increase; which said Damages amount in the whole to fifty Pounds. And let the aforesaid *C.* be taken, &c.

Taken.

*If Judgment be against the Plaintiff,
then thus:*

Judgment against the Plaintiff.

*Nil capiat
per billam.*

Therefore it is considered, that the aforesaid *H.* take nothing by his Bill against the aforesaid *C.* but that he and his Pledges of prosecuting, to wit, *J. Doe* and *Rich. Roe* be in Mercy, &c. And the aforesaid *C.* may go thereof without a Day, &c. **And it is farther considered,** that the aforesaid *C.* recover against the aforesaid *A.* 6 *l.* 10 *l.* for his Costs and Charges by him about his Defence sustained in this Behalf, adjudged by the Court of the said Lord the King now here to the said *C.* on his Assent, according to the Form of the Statute in such

Case

Cafe made and provided. And the aforesaid *King's*
C. may have Execution therein, &c. *Bench.*

See before amongst the *Posteas*.

And thus is your Judgment entered and fi- *Committiturs.*
nished, and you must remember to leave a
good Space between it and the Beginning of
another Judgment, that you may have Room
to enter Commitments, which is when the
Defendant is charged in the *King's Bench* Pri-
son, and to enter Satisfaction acknowledged
upon the Record, &c.

*If Satisfaction be hereupon acknow-
ledged, you enter thus:*

Afterwards, to wit, on *Wednesday* next
after — in the — Year of the Reign
of the Lord *George* the Second, now King of
Great Britain, &c. before the Lord the King
at *Westminster*, comes the aforesaid *A.* by *J. S.*
his Attorney, by the Court of the said Lord
the King now here especially appointed, and
acknowledgeth himself to be satisfied by the
aforesaid *C.* of (*for*) the Debt and Damages
aforesaid. **Therefore** let the said *C.* be dis-
charged of the Debt and Damages aforesaid,
&c.

And *Note*, That you may enter the Issues *Issues and*
and Judgments on both Sides the Roll; but *Judgments*
you must remember not to write too near the *entered.*
Bottom of the Roll on the fore-side of it, be-
cause within an Inch of the Bottom, and
where the Roll is of full Breadth, you are to

King's
Bench.

write the Number of the Roll, and the chief Clerk's Name thus, in large Hand and Figures, Roll CXXV.

Anthony and Bigge.

Note; Upon a
Trial at the
Assizes.

The same Method for those at the Assizes in the Country *mutatis mutandis*.

When you have Occasion to write on the Back-side of the Roll, you must begin over against the first Line of your *Memorandum* on the Fore-side, or thereabouts, leaving a Margin as on the other Side.

How to sign Judgment on a Warrant of Attorney.

WRITE your Declaration (or make an *Incipitur* thereof) on a double Half Crown stamped Paper, and likewise an *Incipitur* on the Roll, and the Clerk of the Dockets will enter and mark your Declaration and Roll, then the Master will sign your Judgment and allow you 63 s. Costs.

But before you sign your Judgment you must file common Bail for the Defendant.

A Declaration on a Mutuatus for a Judgment by Warrant of Attorney.

Of the Term of St. Michael in the — Year of King George 2.

S. (to wit,) **A.** B. complains of C. D. in the Custody of the Marshal, &c. of a Plea, that he render to him one Hundred Pounds

Pounds of lawful Money of *Great Britain* King's which he owes him, and unjustly detains for Bench. that, to wit, that ~~whereas~~ the aforesaid *C. D.* Not informed the tenth Day of *June* in the — Year of the by *F. G.* Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at *E.* in the County aforesaid, had borrowed of the aforesaid *A.* the aforesaid 100 *l.* to be paid unto the aforesaid *A.* when he should be thereto requested; yet the aforesaid *C.* (altho' often requested, &c.) hath not yet paid the said 100 *l.* to the said *A.* but to pay the same he hath hitherto altogether denied, and yet doth deny; wherefore the aforesaid *A.* says that he is injured, and has Damage to the Value of 20 *l.* and therefore he brings this Suit, &c.

<i>John Thornhill</i> for	}	Pledges of	}	<i>Jo. Doe,</i>
the Plaintiff.				Prosecuting
<i>Josias Fitchet</i> for	}			
the Defendant.				

Note; This Judgment must be entered as others by Way of *Memorandum* on the Roll, which is usually of the same Term; as, **Be it remember'd**, that on *Wednesday* next after fifteen Days of *Easter* in this same Term, before the Lord the King, (&c.) And after the Declaration, then the Judgment as hereafter.

Then you proceed to make your *Fi' Fa'*, or such Writ as requisite.

King's
Bench.

How to enter Judgments Without Trials upon the Roll.

THESE Judgments are entered upon the like Rolls as other; nay, you may enter them upon the very same Rolls, if you will, as is usual, observing to leave Spaces for *Committiturs*, *Satisfactions*, and such Matters as may occasionally follow each Judgment.

Now by way of Repetition, I say,

First make a Margin of an Inch wide, then Rule a Line about a Span from the Top of the Roll, then write in large Hand,

As yet (also) of the Term of the Holy Trinity. Witness Sir William Lee, Knt. (as the Term and Chief Justice's Name requires.)

Next enter your Warrants, as above observed, thus, (to wit.)

For the
Plaintiff.

Somerſet, ſſ. A. B. puts in his place C. D. his Attorney, againſt E. F. (otherwiſe called (&c.) if an *Alias dict'* in the Declaration,) of of a Plea of Debt, (as the Action is.)

For the De-
ſendant.

Somerſet, ſſ. E. F. puts in his place G. H. his Attorney, againſt A. B. of a Plea of Debt, (Caſe, or as the Action is.)

Or

Or thus for the Defendant.

Somerſet, ſſ. *The ſame E. F. puts in his place* King's
G. H. his Attorney, at the Suit Bench.
of A. B. of the Plea afore-
ſaid.

Note ; When Judgment is ſigned by De-
 fault, and the Defendant has not employed an
 Attorney, but the Plaintiff has entered Ap-
 pearance for him according to the Statute, the
 Defendant's Warrant ſhould be thus :

Somerſet, ſſ. *The ſaid E. F. in his proper Per-*
ſon, according to the Statute, at
the Suit of (or to Answer) the
ſaid A. B. of the Plea aforeſaid.

Next within Half an Inch under begin to
 enter Judgments.

And *Note*, That ſome of theſe Judgments
 witho ut Trial are by Default, as *Nil dicit* ;
 ſome by Confefſion of the Party, as *Cogn. Ac-*
tionem ; ſome by Aſſent of the Attorney, as *Non*
ſum informatus, (&c.)

You ſeldom have any Thing but the Decla- *See before.*
 ration to enter theſe by, and the Nature of
 the Judgment marked upon it, and Coſts taxed
 on the Margin of the Declaration.

You muſt begin with a *Memorandum* either *Memoran-*
 of the ſame Term or of another, (as you will *dum.*
 ſee by the Declarations) as is before directed,
 to the End of the Declaration.

Then beginning a new Line, write your
 Judgment.

Nil

King's
Bench.

Nil dicit. *In Debt.*

*Thus with an
Impar lance.*

AND now at this Day, to wit, *Wednesday* next after — (*the first Day of the Term Judgment is entered*) in this same Term, until which Day the aforesaid C. D. had Leave to imparl to the Bill aforesaid, and then to answer, &c. the aforesaid A. B. comes before the Lord the King at *Westminster* by his Attorney aforesaid, and the aforesaid C. D. altho' (at this same Day) solemnly required, comes not, nor saith any Thing in Bar or Preclusion of the Action aforesaid of the said A. whereby the said A. remains against the aforesaid C. therein undefended, &c. (*or without his Defence therein*): Therefore it is considered, that the aforesaid A. do recover against the said C. his Debt aforesaid, and also thirty-three Shillings and four Pence (*the Costs taxed*) for his Damages which he hath sustained as well on Occasion of the Detaining that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, adjudged to the said A. by the Court of the said Lord the King now here on his Assent; and the aforesaid C. in Mercy, &c.

In the Margin of the Roll put, Judgment signed 30th of August 1732. Mercy.

Note, That sometimes there is no Impar lance, as when the Judgment is confessed, &c. the same Term the Declaration is of, as followeth:

Nil

King's
Bench.

*Nil Dicit the same Term, in Debt,
without an Imparlance.*

AND the aforesaid C. in his proper Person (or by G. H. his Attorney, and if the Plaintiff entered the Appearance according to the Statute, add after the Words proper Person according to the Force of the Statute in that Case made and provided) comes and defends the Force and Injury, when, &c. and prays Leave to imparl to the Bill aforesaid; and it is granted to him, &c. and upon this a Day is thereof given to the Parties aforesaid, before the Lord the King at *Westminster*, until *Tuesday* (the last Day of the Term) next after ——— in this same Term, to wit, the aforesaid C. to imparl to the Bill aforesaid, and then to answer, &c. At which Day, before the Lord the King at *Westminster*, the aforesaid A. comes by his Attorney aforesaid, and the said C. altho' (at the same Day) solemnly required, does not come, nor says any Thing, (&c.) as in the former to the End.

*Nil Dicit in Case of another Term, with
an Imparlance.*

AND now at this Day, to wit, *Tuesday* Nil Dicit. next after ——— (the first Day of the Term Judgment is entered) in this same Term, until which Day the aforesaid C. D. had Leave to imparl to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster*,

King's
Bench.

minster, the aforesaid *A. B.* comes by his Attorney aforesaid, and prays that the aforesaid *C. D.* may answer to the Declaration aforesaid; and the aforesaid *C. D.* altho' (at this same Day) solemnly required, does not come, nor says any Thing in Bar or Preclusion of the Action of the said *A. B.* by which the said *A. B.* remains thereof against him undefended, &c.— For that (*wherefore*) the said *A. B.* ought to recover his Damages aforesaid against the aforesaid *C. D.* sustained on Occasion of the Premises aforesaid. But because the Court of the said Lord the King now here know not what Damages the said *A. B.* hath sustained in this Behalf, on Occasion of the Premises aforesaid; **Therefore** the Sheriff is commanded that by the Oaths of twelve honest and lawful Men of his Bailiwick he diligently inquire what Damages the aforesaid *A. B.* hath sustained as well by Occasion of the Premises aforesaid, as for his Costs and Charges by him put to about his Suit in this Behalf; And that he send the Inquisition which he shall take thereof to the Lord the King at *Westminster*, on *Wednesday* next after three Weeks of *St. Michael* (*the Return of the Writ of Inquiry*) under his Seal, and the Seals of them by whose Oaths he shall take that Inquisition, together with the Writ of the Lord the King to him thereon directed. The same Day is given to the said *A. B.* there, &c.

Writ of In-
quiry.

Hereupon a Writ of Inquiry of Damages must be made out, the Form whereof see after, where you may find how to enter Judgments upon this Writ. *At which Day, &c.*

Nil Dicit *in Case, the same Term with the Declaration.* King's Bench.

AND the aforesaid *E.* by *B. C.* his Attorney comes and defends the Force and Injury, when, &c. and the aforesaid *A.* (the Plaintiff) prays, that the aforesaid *E.* may answer to his Declaration aforesaid, upon which (whereupon) the aforesaid *E.* has till Monday next after Fifteen Days of St. Martin (the last Day of the Term) given to him by the Court of the Lord the King here to answer, &c. And the said *E.* (at this same Day) being solemnly required to answer does not come, nor does the said Attorney of the said *E.* say any Thing therein for the said *E.* in Bar or Preclusion of the aforesaid Action of the said *A.* whereby the said *A.* remains therein against the said *E.* undefended; for that (wherefore) the aforesaid *A.* ought to recover his Damages against the aforesaid *E.* sustained on Occasion of the Premises aforesaid. But because the Court, (&c.) as next before.

If in Trespass, you must enter as before, *Trespass*, only *mutatis mutandis*, and instead of *on Occasion of the Premises aforesaid*, you must say, by *Occasion of the Trespass aforesaid*.

In Assault, on Occasion of the *Trespass and Assault*, *Assault aforesaid*.

In Assault and Imprisonment, on Occasion of *Assault and the Trespass, Assault and Imprisonment aforesaid*.

In

Kings'
Bench.

Covenant.
Assumpsit.

Ejectment.

In Covenant, of the Breach of the Covenants
aforesaid.

In Assumpsit, on Occasion of the Non-Per-
formance of the Promises and Assumptions (Un-
dertakings) aforesaid.

In Ejectment with Damages, say as before,
until undefended, &c. Therefore it is con-
sidered, that the aforesaid *A.* do recover his
Term as yet to come of and in the Tenements
aforesaid, with the Appurtenances, and his Da-
mages, on Occasion of the Trespass and Eject-
ment aforesaid, against the aforesaid (*Defen-
dant*): But because the Court of the Lord the
King now here before the King himself, know
not what Damages the aforesaid *A.* hath sustain-
ed on Occasion of the Trespass and Ejectment
aforesaid; Therefore the Sheriff is commanded
that without Delay he cause the aforesaid *A.* to
have full Possession of his Term as yet to come
of and in the Tenements aforesaid, with the
Appurtenances, and how he shall have executed
this Writ of the said Lord the King, he make
appear to the said Lord the King at *Westminster*,
on *Tuesday* next after—— The Sheriff is
also commanded, That by the Oaths of twelve
honest and lawful Men of his Bailiwick he di-
ligently inquire what Damages the aforesaid *A.*
hath sustained as well on Occasion of the Tres-
pass and Ejectment aforesaid, as for his Costs
and Charges by him put to about his Suit in
this Behalf; And that he send the Inquisition
which he shall take thereon to the said Lord the
King at *Westminster*, at the aforesaid Day, un-
der his Seal, and the Seals of them by whose
Oaths he shall take that Inquisition, together
with the Writ of the said Lord the King, to
him

Writ of In-
quiry.

him thereon directed. The same Day is given to the aforesaid *A.* there, &c.

King's
Bench.

If the Judgment be with a *Remittit Dampna*, say as before, *until* ——— *Therefore* it is considered; (&c.) *until* ought to recover, And upon this the aforesaid *A.* here in Court freely releases to the aforesaid *B.* as well all such Damages, Costs and Charges, which were adjudged in this Behalf to the said *A.* as all Judgments and Executions for the Damages, Costs and Charges aforesaid; therefore the aforesaid *C.* is acquitted of the Damages Costs and Charges aforesaid. And the said *A.* prays the Writ of the Lord the King to be directed to the Sheriff of the County of *S.* to cause him to have Possession of his Term aforesaid, as yet to come, of and in the Tenements aforesaid, with the Appurtenances; and it is granted to him, returnable before the Lord the King at *Westminster* on *Wednesday* next after ——— The same Day is given to the aforesaid *A.* there, &c.

Remittit
Dampna.

Judgment by Cogn. Actionem in Debt,
without an Imparlance.

AND the aforesaid *A.* by *C. B.* his Attorney comes and defends the Force and Injury, when, &c. and says, that he cannot deny the Action aforesaid of the aforesaid *E.* nor but that he owes to the said *E.* the aforesaid Ten Pounds Fifteen Shillings, (*if upon Bond say*, nor but that the Writing obligatory aforesaid is the Deed of the said *A.* nor but that he owes to the said *E.* the aforesaid Ten Pounds Fifteen Shillings,) in Manner and Form as the aforesaid *E.* above complains against him: *Therefore*

Cogn. Ac-
tion.

King's
Bench.

Judgment
signed the —
Day of —
1732.

Mercy.

Therefore it is considered, that the aforesaid *E.* do recover against the aforesaid *A.* his Debt aforesaid, and also Sixty Shillings (*such Costs as are taxed*) for his Damages which he hath sustained as well on Occasion of detaining that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, adjudged to the said *E.* by the Court of the Lord the now King, on his Assent; and the aforesaid *A.* in Mercy, &c.

The Defendant confesses the Damages, to prevent the Expence and Trouble of a Writ of Enquiry.

Declaration.

London, ss. **A.** *B.* complains of *C. D. Gent.* one of the Filazers of the Court of the Lord the King, before the King himself, present here in Court in his proper Person, for that, to wit, That **whereas** the aforesaid *C.* after the first Day of *May* in the Year of our Lord One thousand Seven hundred and Five, to wit, the Twenty-eighth Day of *March* in the Year of our Lord One thousand Seven hundred Thirty-one, at *London* aforesaid in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, made his certain Note in Writing, called a Promissory Note, with his proper Hand subscribed, bearing Date, (&c.) and thereof he brings Suit, &c.

Cogn. Actionem.

And the aforesaid *C.* in his proper Person comes and defends the Force and Injury, when, &c. and says, That he cannot deny the Action aforesaid of the aforesaid *A.* nor but that he the said *C.* undertook in Manner and Form as the aforesaid *A.* above complains thereof against

against him ; nor also but that the aforesaid *A.*

hath sustained Damages, on Occasion of not performing the Promises and Undertakings aforesaid, to Fifty Pounds, as he the aforesaid *A.* above in declaring supposes. And upon this the aforesaid *A.* prays Judgment, and those Damages so acknow-

ledged, together with his Costs and Charges by him sustained about his Suit in this Behalf, to be adjudged to him, &c. Therefore it is considered, That the aforesaid *A.* do recover against the aforesaid *C.* his Damages aforesaid, to Fifty Pounds above acknowledged, and also Six Pounds for his Costs and Charges aforesaid, on his Assent, adjudged now here by the Court of the said Lord the King, which said Damages amount in the whole to Fifty-six Pounds ; and the aforesaid *C.* in Mercy, &c.

I acknowledge this Action, and that the Plaintiff hath sustained Damages to 50l. so that Execution stays until the 15th Day of April next ensuing. C. D. 9 Feb. in the 5th Year of King George. for Costs 6l. 9th Feb. 1731.

Judgment signed — Day of —.

Mercy.

Cogn. Action. by Administrator.

AND the aforesaid *A. B.* and *C. D.* by Cogn. Act *E. F.* their Attorney come and defend the Force and Injury, when, &c. And say, that they cannot deny but that the Writing obligatory aforesaid, is the Deed of the aforesaid *G.* nor but that they detain from the aforesaid *H.* the aforesaid One hundred Pounds, in Manner and Form as the aforesaid *H.* above complains against him ; Therefore it is considered, that the aforesaid *H.* do recover against the aforesaid *A.* and *C.* his Debt aforesaid, and

O

also

King's
Bench.
Judgment
signed —
Day of —
in the Year of
our Lord
1732.

also Three Pounds Ten Shillings for his Damages which he hath sustained as well on Occasion of the detaining that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, adjudged by the Court of the Lord the King here, on his Assent, of the Goods and Chattels which were the aforesaid *G.*'s at the Time of his Death, in the Hands of them the said *A.* and *C.* to be administered, if they have so much in their Hands; and if they have not so much, then the Damages aforesaid to be levied of the proper Goods and Chattels of the said *A.* and *C.* and the same *A.* and *C.* in Mercy, &c.

Mercy.

If the Defendant hath pleaded *Non est factum*, and Issue thereupon, and after the Defendant is willing to confess the Action, then enter it thus.

Relicta Verificatione.

See after in
Coro non Pleas.

At which Day before the Lord the King at Westminster the Parties aforesaid come by their Attorney aforesaid; and upon this the aforesaid *A.* having relinquished his Verification aforesaid by him above pretended, says, That he cannot deny the said Action of the aforesaid *E.* nor but that he owes, &c. (as first above).

Judgment

Judgment by Non sum Informatus without an Imparlance in Debt. See after with an Imparlance.

King's Bench.
See the Declaration upon a Mutuatus before.

AND the aforesaid *B.* by *C. D.* his Attorney comes and defends the Force and Injury, when, &c. And the aforesaid *A.* prays, that the aforesaid *B.* may answer to his Declaration aforesaid; upon which the aforesaid Attorney of the said *B.* saith, that he is not informed by the said *B.* of any Answer to be given for the said *B.* to the said *A.* in the Premisses, nor saith he any Thing else thereof, in Bar or Preclusion of the said Action of the aforesaid *A.* by which the said *A.* remains therein against the aforesaid *B.* undefended, &c. — **Therefore** it is considered, That the aforesaid *A.* do recover against the aforesaid *B.* his Debt aforesaid, and also Sixty and three Shillings (*the Costs usually allowed*) for his Damages which he hath sustained as well by Occasion of the detaining that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, to the said *A.* adjudged by the Court of the said Lord the King now here, on his Assent; and the aforesaid *B.* in Mercy, &c.

Signed —
Day of November
1732.
Mercy.

See after for one with an Imparlance.

Note; Costs upon a Bond only Fifty-three Shillings, because it is supposed the Plaintiff may take more Cost out of the Penalty.

Write as above, until — undefended, &c. *Not informed*
For that the aforesaid *A.* ought to recover his in Case upon
Damages against the aforesaid *B.* by Occasion of an Assumpsit.

King's
Bench.

the not performing the Promises and Undertakings aforesaid: But because the Court of the said Lord the King now here before the King himself, know not what Damages the said *A.* hath in this Behalf sustained by Occasion of the not performing the Promises and Undertakings aforesaid; Therefore the Sheriff is commanded, That by the Oaths of twelve honest and lawful Men of his Bailiwick he diligently inquire what Damages, &c. *as in Nil dicit in Case, only instead of* by Occasion of the Premises, *say,* by Occasion of the not performing the Promises and Undertakings aforesaid, (*&c.*)

If in Trespass, then as next above, only *mutatis mutandis* say, *by Occasion of the Trespass aforesaid.*

If in Trespass and Assault, say, *on Occasion of the Trespass and Assault aforesaid.*

If in Trespass, Assault and Imprisonment, say, *by Occasion of the Trespass, Assault and Imprisonment aforesaid*— and so of the rest.

Non Inform.
with an Im-
parlance.

Note; If your *Non Inform.* be of another Term with an Imparlance, you must begin as in others.

Imparlance.

AND now at this Day, to wit, &c. (*as before unto*) and the said *B.* defends the Force and Injury, when, &c. And upon this the aforesaid *A.* prays, that the aforesaid *B.* may answer to his Declaration aforesaid, &c. upon which the aforesaid Attorney of the said *B.* says that he is not informed by the said *B.* &c. (*as before.*)

Note;

Note ; By the Act for Amendment of the King's Law 4 & 5 Anne, It is enacted, that all Statutes of * Jeofails shall be extended to Judgments, which shall be at any Time entered upon Confession, *Nil dicit* or *Non sum informatus* in any Court of Record, and no such Judgment shall be reversed, nor any Judgment upon any Writ of Enquiry of Damages executed thereon be staid and reversed, for or by Reason of any Imperfection, Omission, Defect, Matter or Thing whatsoever, which would have been aided and cured by any of the said Statutes of Jeofails, in case a Verdict of twelve Men had been given in the said Action or Suit, so as there be an original Writ or Bill, and Warrants of Attorney duly filed, according to the Law as is now used. * 18 Elix. c. 14.

We will next proceed to Writs of Execution upon the aforesaid Judgments, and upon Judgments by Trial and Verdict.

But first we will see a Writ of Inquiry of Damages, where the Judgment is without Trial.

Note ; By a Rule of Mich. 5 Anna, All Rolls are to be brought into the Office, fairly ingrossed, by the Times limited by the former Rules, viz. The Rolls of Trin. Mich. and Hillary Terms, before the Effoin-day of every subsequent Term, and Rolls of Easter Term before the first Day of Trin. Term. *When Rolls to be carried in.*

And *Note* ; The Clerks (or Attornies) of the King's Bench, when they carry in their Entries, docquet them thus on a Sheet of Paper

King's
Bench.

in plain Hand, and after having taken their Numbers for the Rolls from the *Nisi prius* Office.

THE Entries of *A. B.* Gentleman, one of the Clerks of — Chief Clerk of the Lord the King, &c. (or one of the Attornies of the Court of the Lord the King before the King himself, &c.) of the Term of the Holy Trinity in the — Year of the Reign of *George* the Second, now King of *Great Britain*, &c.

Witness Sir William Lee, Knt,

Dorset, ff. Says nothing in Debt upon an Obligation between *L. M.* Assignee of *W. B.* Esq; late Sheriff of the County of *S.* Plaintiff, and *S. B.* otherwise called *S. B.* of *W.* in the County of *S.* Gent. as well for 4000 *l.* Debt, as 46 *s.* for Costs. } *Roll 97.*

London, ff. *Non proffs'* in Debt for want of a Replication between *R. P.* Widow, Administratrix of *S. P.* Plaintiff, and *W. C.* a Prisoner, Defendant. } *Roll*

Somerset,

King's
Bench.

Somerset, ff. Not informed in Debt,
upon a *Mutuatus* (or for
Money lent) between
T. C. Plaintiff, and J. A.
as well for 500 l. Debt,
as 63 s. for Costs. } Roll

Devon, ff. The Entry of a *Sci. Fa.*
in Debt, between C. S.
Plaintiff, and H. L. De-
fendant, as well for 155 l.
Debt, as 63 s. for Costs } Roll

Somerset, ff. Not guilty in Trespas,
between A. B. Plaintiff, } Roll 106.
and D. E. Defendant.

Gloucester, ff. Says nothing in Debt
for 100 l. on an Obliga-
tion between A. B.
Plaintiff, otherwise cal-
led, (&c.) D. E. (&c.) } The same
and for ——— Damages } Roll.
and Costs.

And so of the rest.

Writ of Inquiry of Damages.

George the Second, by the Grace of God, *Not to be sign-*
of Great Britain, France and Ireland *ed at the Of-*
King, Defender of the Faith, &c. To the *see, but sealed.*
Sheriff of Somerset Greeting: Whereas A. B.
lately in our Court before us at Westminster,
O 4 by

King's
Bench

by Bill without our Writ, impleaded C. D. in the Custody of the Marshal of our *Marshallsea*, being before us for that, to wit, That **whereas** the aforesaid C. D. the first Day of January in the fifth Year of our Reign, (&c. *as in the Declaration Word for Word, only saying, in the ——— Year of our Reign, instead of in the ——— Year of the Lord the now King, &c.* * *as in the Declaration, till you come to,*) to the Damage of the said A. — Pounds, as he saith. (*And thereupon hath brought Suit, &c.:*) **And** such are the Proceedings in our said Court before us, that the said A. ought to recover his Damages against the aforesaid † C. by Occasion of the Premisses aforesaid: **But** because it is unknown to our Court before us what Damages the said A. hath sustained by the Occasion aforesaid; Therefore we command you that by the Oaths of twelve honest and lawful Men of thy Bailiwick, you diligently inquire what Damages the said A. hath sustained as well on the Occasion aforesaid, as for his Costs and Charges by him put to about his Suit in this Behalf; and the Inquisition which you shall make thereof do you make appear (*or send*) to us at *Westminster* on *Wednesday* next after three Weeks of *St. Michael* (*the Day of the Return*) under your Seal, and the Seals of them by whose Oaths you take that Inquisition; and have then there this Writ. **Witness** Sir *Wm. Lee*, Knt. at *Westminster*, the 28th Day of *November* in the 14th Year of our Reign.

* Note; If it is in the Declaration, in the Year of our Lord 1732, insert it in the Writ, and not the Words, in the Year of our Reign.

† If against an Executor (against the aforesaid C. (the Executor) by Occasion of the Premisses aforesaid, of the Goods and Chattels which were of the said (Testator) at the Time of his Death, in the Hands of the said C. to be administered, if he has so much in his Hands. **But**, &c. as herein.

Anthony and Bigge.

King's
Bench.

*The Form of a Subpoena, to testify upon
this Writ of Inquiry for the Plaintiff's
Witnesses.*

GEORGE the 2d, by the Grace of God, of *You sign and*
Great Britain, France and Ireland King, *seal this Writ.*
Defender of the Faith, &c. To J. S. T. W.
(naming your Witnesses. You may not insert more
than four.) Greeting: **W**e command you, and
every of you, that * setting aside (or forbearing) * *Setting aside*
all and singular Business and Excuses whatsoever, *all other*
you be, and every one of you be, in your pro- *Things, and*
per Persons, before T. B. Esq; Sheriff of the *ceasing every*
County of S. or his Under-Sheriff on Wednes- *Excuse, you be.*
day the ——— Day of *October* next ensuing
at the Inn of one J. T. called the *Star Inn*
in L. in the County aforesaid, there to testify
† all and singular those Things according to † *The Truth*
your Information and Knowledge, which ye *accord ng to*
know, or any of you knoweth, in a certain Ac- *your Know-*
tion in our Court, before us now depending, *ledge in a cer-*
between H. K. Plaintiff, and H. H. Defendant *tain Action.*
of a Plea of Covenants broken (of Trespas, *as the Case is*) in
which said Plea, our certain Writ of Inquiry
of Damages hath been sent by us out of our
Court before us, and directed to the said She-
riff of S. then and there in Form of Law to be
executed before the said Sheriff; and this you,
nor any of you, shall in no wise omit, under
the Penalty of 100 l. **Witness** Sir Wm.
Lee, Knt, &c.

Anthony and Bigge.

Upon

King's
Bench.

Upon this you must fill up a Ticket to leave
with each Witness.

The T I C K E T.

The Ticket.

By Virtue of a Writ of *Subpœna* to you directed, and herewith shewed unto you, you are personally to be and appear before *R. B. Esq;* Sheriff of the County of *S.* or his Under-Sheriff, on *Wednesday* the 12th Day of his Instant *October*, at Two of the Clock in the Afternoon, at the House of *Mr. J. T.* commonly called the *Star-Inn* in *L.* then and there to testify the Truth according to your Knowledge, upon a Writ of Inquiry of Damages, to be then and there executed in a certain Cause now depending between *H. K.* Plaintiff, and *H. H.* Defendant, in a Plea of Covenant broken, on the Part of the Plaintiff; and this you are not to omit upon Pain of One Hundred Pounds. Dated the 3d Day of *October* in the 14th Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, &c. And in Year of our Lord 1740.

Note also, That you must first give the Defendant or his Attorney Notice of your Intention to execute the Writ of Inquiry after this Manner.

Mr. N. A. against B. in Case.

Note ; You must always give eight Days Notice of your executing the Inquiry.

Take Notice of the executing a Writ of Inquiry of Damages in this Cause, on the tenth Day of this Instant *August* at Ten of

of the Clock in the Forenoon of the same Day, King's
at the Court-house at *Westminster*; (if it be in Bench.
Middlesex and Term-Time, otherwise you must
name the Time, the Sign of the House, and the
Town.)

From your Servant,

August 2,
1732.

H. Y.

*The Entry and Continuance of the
Judgment on the Roll upon this Writ
of Inquiry. See before.*

AT which Day before the Lord the King
at *Westminster* comes the aforesaid *A. B.*
by his Attorney aforesaid, and the Sheriff, to
wit, *P. M.* Knight, Sheriff of the * County of * *If in Lon-*
S. aforesaid, returned a certain Inquisition be- *don, say City*
fore him at † the Castle of *V.* in the County of *of London.*
S. aforesaid, taken the Tenth Day of *July* in † *Guildhall*
the Sixth Year of the Reign of the Lord *George* *of the City of*
the Second, now King of *Great Britain, &c.* *London, situ-*
by the Oaths of twelve honest and lawful Men *ate in the Pa-*
of his Bailiwick, by which it appears that the *rish of St.*
aforesaid *A. B.* hath sustained Damages by Oc- *Laurence in*
casion of the Premisses aforesaid, besides his *the Old Jury*
Costs and Charges by him put to about his Suit *in the Ward*
in this Behalf, to One hundred Pounds, and for *of Cheap of*
those Costs and Charges to § Sixpence; *There- § 27 s. 4 d.*
fore it is considered, that the aforesaid *A.* do
recover against the aforesaid *C.* the Damages
aforesaid, by the Inquisition aforesaid above
found, and also Fourteen Pounds Nineteen
Shillings

King's
Bench.

Increase.

Mercy.

Shillings and Sixpence, for his Costs and Charges by him put to about his Suit in this Behalf, adjudged by the Court of the said Lord the King now here to the said *A.* at his Request, of Increase, which said Damages amount in the whole to One Hundred and Fifteen Pounds; and the aforesaid *C.* in Mercy, &c.

If it be in Trespas, you say *may be taken*, &c.

Of Arresting Judgments.

BY the Course of the Court, after a Verdict there must be a Rule given (which is out in four Days) before the Plaintiff can enter his Judgment, or take out Execution, which Time is given to the Defendant to move in Arrest of Judgment.

If the Cause be tried within Term, the Rule may be given the Day after the Trial, the *Postea* being indorsed and marked.

If the Sitting after the Term, or at the Assizes, the Rule cannot be given until the first Day of the ensuing Term.

And *Note*, that by the Rules of the Court, no Counsel ought to move any Thing in Arrest of Judgment, except the Roll whereon the Judgment is entered, or the *Postea*, be in Court.

And it is said to be a sufficient Matter to arrest a Judgment (when sufficient Notice of the Trial was not given according to the Course of the Court) so as to obtain a Rule for a new Trial upon the old Pleadings.

Also

Also one may speak in Arrest of Judgment King's given on a *Nihil dicit* after the Writ of Inquiry Bench. of Damages (upon which Writ the like Rule is to be given as upon a *Postea*.)

And no Judgment ought to be entered until the Costs be taxed, and the Judgment signed by the Secondary of the Office.

Of Executions.

After Judgment by Confession, or *Nil Dicit* entered, or after a Verdict at the Assizes, and Judgment thereupon, the Writs of Execution are made out, which are of three Sorts.

1. Either against the Body, as a *Capias ad Satisfaciendum*.
2. Or against the Goods, as a *Fieri Facias*.
3. Or against the Lands, as an *Elegit*.

The several Forms whereof follow.

But Note, That if you once charge the Body in Execution, you have no Remedy against the Goods or Lands, unless the Defendant escape voluntarily, or be discharged by Privilege of Parliament. *Stat. 1 Jac. c. 13.*

A Ca. Sa. in Debt.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. *You only seal this Writ. If there be an Alias Dist. you must recite it.* **To the Sheriff**

King's
Bench.

* *The County
where the
Judgment is
obtained.*

† *Of the De-
taining.*

Sheriff of S. * Greeting: *We* command you, that you take C. D. if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at *Westminster*, on *Wednesday*, &c. (*the Day of the Return*) to satisfy to A. B. for Twenty Pounds Debt, (*the Debt in the Declaration*) which the said A. B. hath lately recovered against him in our Court before us, and also Fifty Shillings (*the Costs*) which were adjudged in our said Court before us to the said A. B. for his Damages which he hath sustained, as well by Occasion of the † Detention of that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, whereof the aforesaid C. D. is convicted, as it appears to us of Record; And have there then this Writ. *Witness* Sir *Wm. Lee*, Knt. at *Westminster*, the — Day of — in the — Year of our Reign.

Anthony and Bigge.

If by Original. Note, That if the Action was by Way of Original, you must make your Ca. Sa. returnable before us, in — &c. *wheresoever we shall then be in England.*

Ca. Sa. in Case, upon Assumpsit.

GEORGE the Second, by the Grace of God, (*&c. as before*) to satisfy to A. B. of Twenty Pounds for his Damages which he hath sustained, as well by Occasion of the Non-performance of certain Promises and Undertakings lately made to the said A. by the afore-
said

said B. as for his Costs and Charges by him put to about his Suit (*as before*). King's Bench.

Ca. Sa. in Trespass, upon the Case in general.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of D. Greeting: We command you, that you take C. D. if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at Westminster on Wednesday (*the Day of the Return*) to satisfy A. B. of Twenty Pounds for his Damages which he hath sustained, as well by Occasion of a certain Trespass upon the Case lately done (*committed*) to the said A. by the aforesaid C. as for his Costs and Charges by him put to about his Suit in this Behalf, &c. (*as before.*)

In Trespass and Assault.

As well by Occasion of a certain Trespass and Assault lately made by the said C. upon the said A. as for his Costs and Charges, (&c.)

In Trespass only.

To satisfy to A. B. of Twenty Pounds for his Damages which he hath sustained as well by Occasion of a certain Trespass lately done (*committed*) to the said A. by the aforesaid C. as for his Costs, &c. (*as before.*)

In

In Covenant, say,

As well by Occasion of the Breach of certain Covenants lately made to the said *A.* by the aforesaid *C.* as for the Costs and Charges, &c. (*as in others.*)

In Ejectment, say,

As well by Occasion of a certain Trespass and Ejectment lately done (*committed*) to the same *A.* by the aforesaid *C.* as for the Costs, &c. (*as in others.*)

Ca. Sa. in several Damages in Trespass.

Gorge the Second, by the Grace of God, (*&c.*) To the Sheriff of *S.* Greeting: We command you, That you take *C. D.* late of — and *E. F.* late of — (*&c.*) to satisfy to *A. B.* two Shillings for his Damages, which he hath sustained by Occasion of the taking and carrying away six Sheep of the said *A.* and also the said *C.* and *E.* to satisfy to the said *A.* six Pounds, which were adjudged to the said *A.* in our Court before us at *Westminster*, for his Costs and Charges by Occasion of the Trespass aforesaid done (*committed*) to the said *A.* by the aforesaid *C.* and *E.* by Force and Arms, and against our Peace at *G.* in your County, whereof they are convicted, as appears to us of Record; And have, (*&c.*)

King's
Bench.

Testat. Ca. Sa. in Debt.

GEORGE the Second, by the Grace of God, *If the Declaration be laid of Great Britain, France and Ireland in London, King, Defender of the Faith, &c. To the Sheriff of London, Greeting: Whereas we or any County, and the Cause lately commanded our Sheriff of S. that he tried there, and the Defendant not being to be found there, then a Ca. Sa. as before, is awarded to the Sheriff of London, &c. who returns Non est invenius, and thereupon this Writ is made out, and directed to the Sheriff of the County, where the Defendant sculks.* should take C. D. if he might be found in his Bailiwick, and him safely keep, so that he should have his Body before us at *Westminster* at a certain Day now past, to satisfy to A. B. of (for) a Debt of Twenty Pounds, which the said A. B. hath lately recovered against him in our Court before us, and also Fifty Shillings, which to the said A. B. in our said Court before us were adjudged for his Damages which he hath sustained as well by reason of the detaining that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, whereof the said C. D. is convicted, as it appears to us of Record: And our said Sheriff of S. at that Day returned to us, that the said C. was not to be found in his Bailiwick; whereupon on the Behalf of the said A. it is sufficiently attested in our Court before us, that the aforesaid C. lurks and wanders up and down in your County: Therefore we command you that you take him, if he may be found in your Bailiwick, and safely keep him, so that you have his Body before us at *Westminster* on *Wednesday* next after — * to satisfy the aforesaid A. of (for) the Debt and Damages aforesaid; And have then there this Writ, (&c.)

King's
Bench.

Testat. Ca. Sa. *in Case.*

* To satisfy the aforesaid *A.* for his Damages aforesaid; And have —

Ca. Sa. against the Bail in Debt.

GEORGE the Second, (*&c.*) We command you, That you take *C. D.* of, (*&c.*) *E. F.* of, (*&c.*) the Bail of *G. H.* if (*&c. as before*) to satisfy to *A. B.* for two hundred Pounds Debt, and also Four Pounds for his Damages, (*&c. as before for Debt*) whereof the said *E.* is convicted, as appears to us of Record: And whereof it is considered in our said Court before us at *Westminster*, that the aforesaid *A.* have Execution against the aforesaid *C.* and *E.* for the Debt and Damages aforesaid, according to the Force, Form and Effect of a certain Recognizance acknowledged by them the said *C.* and *E.* in our Court before us for the said *G.* at the Suit of the said *A.* as it likewise appears to us of Record; And have, *&c.* (*as in others.*)

See after Scir.
Fac.

Note; There must be a *Ca. Sa.* against the Defendant, and a *Non est inventus* returned and filed before the Sueing forth this Writ against the Bail, and it must be by the Sheriff of the County where the Action is laid.

Ca. Sa.

Ca. Sa. *against the Plaintiff, for Costs upon a Nonsuit.* King's Bench.

— That you take *A. B. (&c.)* to satisfy *If you take out*
to *D. E.* according to the Form of the Statute *a Ca. Sa. and*
in such Case thereof lately made and provided, *imprison the*
of (*for*) five Pounds adjudged to the said *D. Defendant*
in our Court before us for his Costs and *thereupon, you*
Charges by him put to in a certain Action *cannot have a*
against the said *D.* at the Suit of the aforesaid *A. legit. Fi. Fa. or E-*
of a Plea of Debt, (*or Trespass on the Case, as*
the Case is) Forasmuch as the said *A.* hath not
prosecuted his said Action; And have —

Ca. Sa. *against the Plaintiff for Costs after a Verdict.*

— To satisfy *D. E.* of (*for*) thirty Shillings,
adjudged in our Court before us to the said *D.*
according to the Form of the Statute thereof (*in*
such Case) made and provided, for his Costs and
Charges by him put to about his Defence, in a
certain Action of Debt (*as the Action is*) at the
Suit of the aforesaid *A.* And have then there
this Writ. *Witness Sir Wm. Lee, &c.*

Ca. Sa. *after a Sci. Fa.*

Note, That if you make out a Ca. Sa. after
a Scir. Fa. hath issued, then after the Words,
it appears to us on Record, you must add —
and whereupon in our said Court before us, it
is considered, that the said *A.* may have Execu-
tion against the said *D.* for the Debt and Da-
mages aforesaid; And have there then this Writ,
&c.

King's
Bench.

Ca. Sa. for an Administrator.

— To satisfy to *A. B.* Gentleman, Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of *C. D.* lately deceased, who died Intestate of (*for*) a Debt of Ten Pounds, and also, (*&c.*) for Cosis (*as in others,*) as appears to us of Record; and whereof it is considered in our said Court before us, That the aforesaid *A.* may thereupon have his Execution; And have there then this Writ, (*&c.*)

For an Executor.

— To satisfy to *A. B.* Gentleman, Executor of the last Will and Testament of *C. B.* deceased, for 100 *l.* Debt. (*&c. as before.*)

Fieri Fac. in Debt.

Not to be signed at King's Bench Office, but only sealed. **G**EORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, *&c.* To the Sheriff of *S.* Greeting: **We** command you, That you cause to be made of the Goods and Chattels of *C. D.* (*if on a Bond, say otherwise called, &c. as in the Bond*) in your Bailiwick you cause to be made one hundred Pounds, which *A. B.* lately in our Court before us at *Westminster* hath recovered against him of (*for*)

(for) a Debt; and also 53 s. (*the Costs*) which King's were lately adjudged in our Court before us to Bench. the said *A.* for his Damages which he hath sustained as well by Occasion of the detaining of that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, whereof the said *C. D.* is convicted, as it appears to us of Record; And have that Money before us at *Westminster* on *Wednesday* next after fifteen Days of *Easter*, to render to the said *A.* of his Debt and Damages aforesaid; And have there this Writ, (&c.)

If you first sue out a *Fieri Facias* against the Defendant's Goods, and levy Part thereof, then you may afterwards have a *Ca. Sa.* against the Defendant's Body, or a second *Fi. Fa.* or an *Elegit*, for the Residue; but if you first imprison upon a *Ca. Sa.* you cannot have a *Fi. Fa.* or an *Elegit*.

Fieri Fa. in Case upon Promise.

— For his Damages which he hath sustained as well by Occasion of the not performing of certain Promises and Undertakings, (*or a certain Promise and Undertaking, as the Case is*) lately made by the said *C.* to the said *A.* as for his Costs and Charges, &c. as before —

*Hier Facias.**In Covenant.*

— For his Damages which he hath sustained as well by Occasion of the Breach of certain Covenants lately made between the aforesaid C. and the aforesaid A. as for his Costs and Charges by him put to about his Suit in this Behalf; (*&c. as before.*)

In Ejectment.

— For his Damages which he hath sustained by Occasion of a certain Trespass and Ejectment, (*or certain Trespasses and Ejectments, as the Case is,*) committed by the said C. against the aforesaid A. with Force and Arms, and against our Peace, at E. in your County, (*&c.*)

In Trespass.

— For his Damages which he hath sustained as well by Occasion of a certain Trespass committed against the said A. by the aforesaid C. with Force and Arms, (*&c. ut prox antea.*)

Against an Administrator.

— That you cause to be made 100 l. of the Goods and Chattels which were of A. B. deceased, at the Time of his Death, in the Hands

Hands and Custody of *E. F.* Administrator of King's
all and singular the Goods and Chattels, Rights Bench.
and Credits, which were the aforesaid *C.'s* at
the Time of his Death, who died Intestate,
&c. being in your Bailiwick, which *A. B.*
(&c.) whereof he is convicted, as appears unto
us of Record, if he hath so much in his
Hands; and if he hath not so much in his
Hands, then the * Damages aforesaid to be le- * *If in Debt,*
vied of the proper Goods and Chattels of *but if in Case*
the said *E. F.* And have that Money, (&c.) *say, Costs and*
Charges a-
foresaid.

Against an Executor.

Note; *If it be against an Executor, you*
say, That you cause to be made 100 l. of the
Goods and Chattels which were of A. B. de-
ceased, lately called, (&c. if upon a Bond or
other Specialty) at the Time of his Death, in
the Hands and Custody of C. D. Executor of
the Last Will and Testament of the aforesaid
A. in your Bailiwick, (&c. as above.)

Note; There may be a *Testatum Fieri Fa'*
to another County, where the Defendant hath
not Goods and Chattels enough in the Coun-
ty, where the Action is laid, to satisfy the Ex-
ecution, but hath sufficient in the other.

Fieri Fac' against the Plaintiff for
Costs to the Defendant.

— That you cause to be made of the
Goods and Chattels of *A. B.* in your Baili-
wick,

King's
Bench.

wick, ten Pounds which were lately adjudged to *C. D.* in our Court before us, according to the Form of the Statute in such Case (lately) made and provided, for his Costs and Charges (by him put to) about his Defence in a certain Action of Trespass, (*Trespass on the Case, &c.*) at the Suit of the said *A.* And have you that Money before us at *Westminster* on *Wednesday* next after three Weeks of *St. Michael*, to render to the said *C.* for his Costs and Charges aforesaid; And have, (*&c. as in others.*)

A Testatum Fieri Fac. in Debt.

GEORGE the Second, by the Grace of God, &c. **T**O the Sheriff of *B.* Greeting: **W**HERAS we lately commanded our Sheriff of *S.* that he should cause to be made of the Goods and Chattels of *C. D.* in his Bailiwick, One hundred Pounds, which *A. B.* lately in our Court before us at *Westminster* hath recovered against him for a Debt; and also (*the Costs*) which lately in our said Court before us were adjudged to the said *A.* for his Damages which he hath sustained as well by Occasion of the Detaining of that Debt; as for his Costs and Charges by him put to about his Suit in this Behalf, whereof he is convicted, as appears to us on Record, and that he should have that Money before us at *Westminster* at a certain Day now past, to render to the said *A. B.* for the Debt and Damages aforesaid: **A**ND our said Sheriff of *S.* at that Day returned to us, that the aforesaid *C.* had no Goods or Chattels in his

his Bailiwick, whereof he could cause to be King's made that Money; whereupon on the Part of Bench. the aforesaid *A.* it is sufficiently attested in our said Court before us, that the aforesaid *C.* hath Goods and Chattels sufficient in your Bailiwick whereof you may cause to be made the Money aforesaid: **Therefore** we command you, that you cause to be made of the Goods and Chattels of the said *C.* in your Bailiwick the aforesaid One hundred Pounds for the Debt, and — for the Damages aforesaid; And have that Money before us at *Westminster* on *Saturday* next after the Morrow of the Ascension of our Lord, to render to the said *A. B.* for his Debt and Damages aforesaid in Form aforesaid; And have there then this Writ. **Witness,** (&c.)

If you take out a *Ca. Sa.* or *Fi. Fa.* and they take no Effect, you may have an *Elegit.*

Elegit in Debt.

GEOFFRE the Second, by the Grace of God, *the Office you* of Great Britain, France and Ireland pay 1 s. 8 d. King, Defender of the Faith, &c. *Sealing 7 d.* To the Sheriff of *S.* Greeting: **Whereas** *A. B.* lately in *An Elegit is* our Court before us at *Westminster*, by Bill *for all the Defendant's Chattels, but his* without our Writ, and by the Judgment of *Oxen and* the said Court, hath recovered against *C. D.* *Beasts of* One hundred Pounds of Debt, and forty Shillings for his Damages which he hath sustained *Plough, and* as well by Occasion of the Detaining of that *Half of his* Debt, as for his Costs and Charges by him *Lands.* put to about his Suit in his Behalf, whereof *Westm. 2. c. 18.* the *Stat. 3 Ed. 3.* *c. 18.*

King's
Bench.

the said C. D. is convicted, as it appears to us of Record: And because the aforesaid A. came into our Court before us, and hath Elected to have delivered to him all the Goods and Chattels of the aforesaid C. besides the Oxen and Beasts of his Plough, and likewise a Moiety of all and singular the Lands and Tenements of the aforesaid C. in your Bailiwick, to hold to him and his Assigns, (as his free Tenement) (or to hold the said Goods and Chattels as his own Goods and Chattels, and also to hold the said Moiety as his Freehold to him and his Assigns,) according to the Form of the Statute in such Case made and provided, until the Debt and Damages aforesaid shall be thereof fully levied: **Therefore** we command you, that without Delay you cause to be delivered to the said A. by a reasonable Price and Extent, (or say, without Delay you cause to be extended at a reasonable Price and delivered to the said A.) all the Goods and Chattels of the aforesaid C. in your Bailiwick, besides (*except*) the Oxen and Beasts of his Plough; and likewise a Moiety of all the Lands and Tenements of the said C. in your Bailiwick, whereof the said C. was seised on — Day of — in the — Year of our Reign, (on which Day the Judgment aforesaid was obtained,) or ever afterwards, to hold the said Goods and Chattels to him as his own proper Goods and Chattels, and also to hold a Moiety of the Lands and Tenements aforesaid as his own free Tenement, to him and his Assigns, according to the Form of the Statute aforesaid, until he shall have thereof levied the Debt and Damages aforesaid; and in what
Manner

Manner you shall have executed this our King's Writ make known to us at *Westminster* on Bench. *Wednesday* after three Weeks of *St. Michael* under your Seal, and the Seals of them by whose Oath you shall have made that Extent and Appraisement, and that you send it together with this Writ. *Witness* Sir *William Lee*, Knt. at *Westminster*, (&c.)

Note, That if you execute an *Elegit* and file it, you are barred from taking out any other Execution from that Judgment afterwards, unless evicted. See *Stat. 32 H. 8. cap. 5.*

If upon this Writ Goods only are levied (because of no Lands) and they are not enough, you may have any other Writ, this being in Effect but a *Fi. Fa.*

Quære, If Lands be extended and not sufficient.

Elegit in Debt for a Residue after a Fi. Fac'.

GEORGE the Second, (&c.) *Whereas* *A. B.* lately in our Court (*reciting the Recovery as before until*) as it appears to us of Record: *And whereas* thereupon by our Writ we lately commanded, that of the Goods and Chattels, &c. (*reciting the whole Writ of Fi. Fa. and the Return,*) and afterwards the aforesaid *A.* came into our Court (*as before until*) according to the Form of the Statute in

Elegit.

in such Case thereof made and provided, until twenty Pounds, Residue of the Debt and Damages aforesaid, shall be thereof fully levied: **T**herefore we command you, that without Delay (*&c. as before until*) according to the Form of the Statute thereof made and provided, until he shall have thereof levied the aforesaid Twenty Pounds, the Residue of the Debt and Damages aforesaid; And in what Manner, (*&c. as before.*)

Elegit after an Elegit, upon a Discovery of more Lands.

GEOGE the Second, (*&c.*) **W**hereas *A. B.* lately in our Court before us at *Westminster* (*&c. reciting the first Writ unto*) until the Debt and Damages aforesaid should be thereof levied; And in what Manner you shall have executed this our Precept, do you make appear to us at *Westminster* on *Friday*, (*&c.*) And you at that Day returned to us a certain Inquisition taken before you at the Castle of *E.* (*such a Day*) last past, by the Oaths of twelve, (*&c.*) by which it appears that the aforesaid *C.* was seised in his Demesne as of Fee at the Time of the Recovery of the Debt aforesaid of the Manor of — (*&c. reciting the Return of the Inquisition*) and because it is now given to us to understand, that the aforesaid *C.* at the Time of obtaining the aforesaid Judgment and afterwards had, and now hath divers other Manors, Lands and Tenements, besides those which are mentioned in the Return before specified,

Writ of Possession.

221

specified, of which said other Manors, Lands King's and Tenements, he also ought to have a Bench. Moiety in Execution for the sooner Recovery of the Debt aforesaid. Wherefore the said *A.* hath humbly prayed us, that * according to the * *juxta Juris Exigent.* Exigency of Right he may be so enabled to have them: **Therefore** we command you, that you cause to be delivered to the said *A.* by (at) a reasonable Price and Extent, as well the other Moiety of all (and singular) the said other Manors, Lands and Tenements of him the said *C.* as of those whereof a Moiety in Execution for Payment of the Debt aforesaid is already extended in your Bailiwick, you do likewise in the Presence of the aforesaid *C.* to be there summoned, if he will be there, to hold to the said *A.* (or to be held by the said *A.*) and his Assigns as his free Tenement (*Freehold*) until the aforesaid One Hundred Pounds shall be fully levied; And whatsoever you shall do therein, send (*make known*) to us at *Westminster* the — Day of — under your Seal, and the Seals of them by whose Oaths you shall make that Extent and Appraisement, together with this Writ. **Witness** Sir *William Lee*, Knt. at *Westminster* the — Day of — in the — Year of our Reign.

Anthony and Bigge.

Writ of Possession.

GEOURGE the Second, by the Grace of God, *To be signed* of Great Britain, France and Ireland King, by Mr. Haw- Defender of the Faith, &c. To the Sheriff of *ley*, 1 s. 8 d.
S. Greet- *Sealing 7 d.*

King's
Bench.

*As in the De-
claration.*

*On this Writ
the Sheriff
may break
open Doors,
and give Pos-
session, for af-
ter Judgment,
it is not the
House of Te-
nant or Defen-
dant.*

** Firma sua
prædict.*

*† If contain-
ing more A-
cres than in
the Declara-
tion, it is er-
roneous.*

S. Greeting: **Whereas** *A. B.* lately in our Court before us at *Westminster*, by Bill without our Writ, and by the Judgment of the same Court hath recovered against *C. D.* his Term as yet to come, of and in three Messuages, twenty-four Acres of Land, (&c.) with the Appurtenances, situate, (&c.) which one *E. F.* the third Day of, (&c.) in the Year, (&c. as in the Declaration) demised to the said *A.* for a Term of Years which is not yet past, to wit, from the thirtieth Day of, (&c.) unto the full End and Term of seven Years from thence next ensuing and fully to be compleat and ended; by Virtue of which said Demise the said *A.* entered in the afore-
said three Messuages, (&c.) with the Appurtenances, and was possessed thereof until the said *C.* afterwards, to wit, the said third Day, (&c.) in the Year, &c. aforesaid, with Force and Arms, (&c.) entered into the aforesaid three Messuages (*as before*) with the Appurtenances in (and upon) the Possession of the said *A.* and ejected, expelled and amoved the said *A.* from his * Farm aforesaid, (his Term aforesaid therein not being yet expired,): **Therefore** we command you, that you cause the aforesaid *A.* to have his Possession of his Term aforesaid yet to come of and in the aforesaid three Messuages, and twenty-four † Acres of Land, with the Appurtenances, (&c.) And in what Manner thou shalt have executed this our Writ make appear (*known*) to us at *Westminster*, (*the Return*) and have there then this Writ. Witness, (&c.)

Thus

Thus you have seen the Forms of several King's Writs of Execution, after Verdict or Judgment. King's Bench.

Proceedings by and against Attornies, &c.

An Attachment of Privilege for a Clerk of the King's Bench.

GEORGE the Second, by the Grace of God, By Stat. 12
 &c. To the Sheriff of S. Greeting: We Geo. 1. Affi-
 command you, that you attach *A. B. C. D. E. F. G. H. J. K. &c.* (for you may put in *a great many*) if they may be found in your Bailiwick, and them safely keep, so that you may have their Bodies before us at *Westminster* on — next after — to answer *L. M. Gent.* one of the Clerks of — Esq; our Chief Clerk, appointed to inrol Pleas in our Court before us, [according to the Liberties and Privileges for such Chief Clerk, and his Clerks, used and approved in the same, (or in our said Court) from the Time whereof the Memory of Man is not to the contrary, (or Time out of Mind)] of a Plea of Trespass; * And have you there this Writ. *Witness, (&c.)*

By Stat. 12 Geo. 1. Affidavit must be made, that the Cause of Action is 10l. or above, to hold the Defendant to Bail.

* If bailable insert the Accetiam.

An Attachment of Privilege for an Attorney of the King's Bench.

(as above to) To answer *E. F. Gent.* being one of the Attornies of our Court before us [according

Proceedings against Attornies, &c.
[according to the Liberties and Privileges for
such Attornies used and approved, &c. (as
before.)]

A Declaration by a Clerk of the Office.

Middlesex, to wit, **A.** B. Gentleman, one
of the Clerks of
Edward Ventris, Esq; Chief Clerk of the
Lord the King, assigned (*appointed*) to inrol
Pleas in the Court of the said Lord the King
before the King himself, according to the Li-
berty and Privilege for such Chief Clerk and
their Clerks, used and approved in the same
Court from the Time whereof the Memory of
Man is not to the contrary, present here in
Court in his proper Person complains of *C. D.*
in the Custody of the Marshal, &c. for that,
to wit, that **Whereas**, (&c.)

Case.

Debt.

Or — in Custody of the Marshal, &c.
of a Plea that he render to him Ten Pounds
which he owes to him and unjustly detains,
(*&c. as the Case is.*)

Against an Attorney of the Court.

Middlesex, ss. **A.** B. complains of *C. D.*
Gentleman, one of the
Attornies of the Court of the Lord the King
before the King himself present here in Court
in his proper Person, for that, to wit, that
Whereas, (&c.) *these may serve Pro and Con.*
mutatis mutandis, and conclude with Pledges
of prosecuting J. Doe and R. Roe, at Length.
See the Statute for that Purpose.

Case.

Note ; No Pleading the Statute of Limitations to an Attorney's Bill. King's Bench.

An Attorney jointly sued with other Persons, or as Executor or Administrator, loses his Privilege.

Certiorari.

A Certiorari for all Plaints and all Attachments.

GEORGE the Second, (&c.) To the Mayor, Aldermen, and Sheriffs of the City of London, Greeting: We being willing for * *Being de-*
 certain * Causes to be certified in our Court *sions for cer-*
 (as well) of all Plaints before ye, or any of *tain Reasons*
 you, against C. D. at the Suit of A. B. levied
 or affirmed (as of whatsoever Attachments
 made upon those Plaints, or any of them in
 the Hands of E. and F. (&c.) or either of
 them: We command ye, and every of you,
 that ye certify to us at *Westminster* on —
 next after — all the Plaints aforesaid, (and
 the Attachments aforesaid, and each of them,)
 with all Things touching them, (or any of
 them,) as fully and clearly as the same now
 remain before ye, or any of you, together
 with this Writ, that you may further cause
 to be done therein what of Right, and ac-
 cording to the Law of our Kingdom of Eng-
 land, we shall see fitting to be done. *Wit-*
 ness, &c.

Q

A Bail.

King's
Bench.

A Bail-piece upon a Certiorari.

Berks, ff. **A.** B. of R. in the County aforesaid, Gent. is delivered to Bail upon a Writ of Certiorari. To C. D. of — in the County aforesaid, Gent. and E. F. of — in the County aforesaid, Gent.

H. At-
torney.

*At the Suit of the Plaintiff
in the Plaint.*

*Taken and ac-
knowledgeed the—
Day of — in
the Year of our
Lord — before
me J. B. one of
the Commissioners.*

Double 12 d.
Stamp.

This Bail-piece must be filed at the Judge's Chambers, with an Affidavit of the due taking it, as on a *Cepi Corpus*, See before.

Habeas

Bench.
King's

Habeas Corpus *returnable in Court.*

GEORGE the Second, (&c.) To the Mayor, Aldermen and Sheriffs of the City of London, Greeting: We command ye (and every of you) that ye have the Body of C. D. detained in our Prison under the Custody of ye, or some of you, as it is said, under safe and secure Conduct, together with the Day and Cause of his being taken and detained, (by whatsoever Name the said A. is charged in the same) before us at *Westminster*, on *Wednesday* next after three Weeks of *St. Michael*, to answer to C. D. of a Plea of Debt, and further to do and receive and receive all and singular those Things which our Court before us then and there shall consider of him in this Behalf; And have there then this Writ. *Witness* Sir *William Lee*, Knt. at *Westminster*, the — Day of — in the — Year of our Reign.

Anthony and Bigge.

Upon Return of the *Habeas Corpus*, the Plaintiff may give a Rule for a *Procedendo*, except the Defendant put in Bail within four Days in Term, and six Days in Vacation.

Habeas Corpus returnable immediately before the Chief Justice.

As before unto — By whatsoever Name the said C. may be charged in the same), you
Q 2 have

Habeas Corpus.

King's
Bench.

have before our trusty and well-beloved Sir *William Lee*, Knt. our Chief Justice, (assigned (*appointed*) to hold Pleas in our Court before us) at his Chamber situate in *Serjeants-Inn* in *Chancery-lane*, immediately after the Receipt of this Writ, to do and receive all and singular those Things which our said Chief Justice then and there shall consider of him in this Behalf; And have there then this Writ. *Witness*, (&c.)

Habeas Corpus *before one of the puisne Judges, immediately.*

— Before Sir *William Chapple*, Knt. one of our Justices (assigned (*appointed*) to hold Pleas in our Court before us,) at his Chambers situate in *Serjeants-Inn* in *Chancery-lane*, immediately after the Receipt of this Writ, to do and receive, (&c. *as before.*)

Habeas Corpus *in Vacation returnable at a Day certain.*

— Have before, &c. on *Monday* the *Fourth Day of April*, about the Hour of *Three* of the Clock in the Afternoon of the same Day, to do and receive, (&c.)

King's
Bench.

An Habeas Corpus to remove a Person charged with Actions in the King's Bench from the Fleet to the King's Bench.

GEORGE the Second, (&c.) To the Guardian (Warden) of our Prison of the Fleet, * Greeting: We command you, that you * (or to his Deputy there.) have the Body of *A. B.* detained in our said Prison under your Custody, as it is said, under safe and secure Conduct, together with the Day and Cause of his being taken and detained, by whatsoever Name the said *A.* may be charged in the same, before us at *Westminster*, (the Return) to answer to *C. D.* of a Plea of Trespas, and also to a Bill of the said *C.* to be exhibited against the said *A.* for One hundred Pounds Debt, according to the Custom of our Court before us; and farther to do and receive what our said Court before us shall then and there consider of him in this Behalf; And have there then this Writ. **Witness**, (&c. as before.)

Habeas Corpus ad testificand'.

GEORGE the Second, (&c.) To *W. N.* Esq; being Marshal of our *Marshalsea* before us, Greeting: We command you, that you have the Body of *A. B.* detained in our Prison under your Custody, as it is said, under safe and secure Conduct, by whatsoever Name the same *A.* may be charged in the same (in the said Prison)

King's
Bench.

son) before our trusty and well-beloved Sir *William Lee*, Knt. our Chief Justice, assigned to hold Pleas in our Court before us at *Westminster*, in the Great Hall of Pleas there, on

* *The Day of Friday* * the first Day of *September* at Eight o'Clock in the Forenoon of the same Day, there to testify the Truth to the best of his Knowledge in a certain Cause now depending in our Court before us, and then and there to be try'd between *C. D.* Plaintiff, and *E. F.* Defendant, in a Plea of Covenant broken, and then immediately after the said *A. B.* shall have then and there given his Testimony (*Evidence*) before the said Chief Justice, to return him the said *A. B.* to our said Prison under safe and secure Conduct; And have there then this Writ.

Witness, (&c.)

Habeas Corpus ad prosequend'.

—To prosecute his Bill against *C. D.* in a Plea of Debt, as he hath begun it in our Court before us, so that we may be able to proceed further in this Behalf, as of Right we shall see fit to be proceeded; And have there, (&c.)

Ad respondend'.

—To answer to *A. B.* of a Plea of Debt, (or Trespass, &c. as the Case,) so that we may be able to proceed, (&c.) as last before.

Ad

King's
Bench.

Ad satisfaciend'.

— To satisfy *A. B.* for twenty Pounds for his Damages which he hath sustained as well by Occasion of a certain Trespass lately committed by the aforesaid *C.* to the said *A.* as for his Costs and Charges, (*&c. as in Sa. Ca.*) as appears to us of Record, so that, *&c. (as above.)*

Habeas Corpus *upon* Capi Corpus.

GEORGE, *&c.* To the Sheriff of *N.* Greet- See concerning
ing : We command you, that you have this Writ be-
the Body of *C. D.* (taken by you and in our fore under Tit.
Prison detained under your Custody, as by Bail.
your Return lately sent into our Court before
us you have charged your self,) before us at
Westminster on *Friday*, (*&c.*) to answer to
A. B. of a Plea of Trespass; And also, (*setting*
forth the Acetiam); And have, (*&c.*)

*The like to the Sheriff of Middlesex up-
on a Capi returned.*

THE Sheriff is commanded, that he have
the Body of *C. D.* [taken by him and
detained in the Prison of the Lord the King
under his Custody, as by his Return lately into
the Court of the Lord the King himself he
hath charged himself,] before the Lord the
King at *Westminster*, (*such a Day*) to answer

King's
Bench.

to *A. B.* of a Plea of Trespass; And that he have there then this Precept, (&c.)

Sometimes the Sheriff will return *Languidus in Prisons*, whereupon you may have an *Habeas Corpus licet Languidus detent*'.

The Form whereof is as follows.

Habeas Cor-
pus where
Sick in Prison
is returned.

GEOFFRE the Second, by the Grace of God, (&c.) To the Sheriff of Northamptonshire, Greeting: We command you that you have the Body of *A. B.* taken by you and detained in our Prison under your Custody, tho' he be detained languishing, (or although he be there sick,) (as manifestly appears to us by your Return (or by the Return of *R. F.* late Sheriff of the County aforelaid) sent into our Court before us,) before us at *Westminster*, (such a Day) to answer (or to satisfy) to *C. D.* (as before) And have there then this Writ, (&c.)

Note; At the Return of all or any of these, you may amerce the Sheriff, as before observed.

Marshal's
Court.

To remove an Action out of an inferior Court into the King's Bench, you must know the Stile or Title of the inferior Court, for which see in *Thesaurus Brevium*. The most usual inferior Courts in or about *London*, are the *Marshal's Court*, the Directions whereof is, To the Judges of the Court of our Palace at *Westminster*, and to each of them, Greeting: We command you, and every of you, that you have the Body, (&c.) The Sheriffs Court of *London*,

London, their Title is, *To the Mayor, Alder- King's
men, and Sheriffs of London, and every of them, Bench.
Greeting. The Court of Stepney, the Direction London.
is, To the Steward of our Court of Record, with-
in the Manor of Stepney and Hackney, in the Whitecha-
County of Middlesex, Hamlets and Liberties of pel.
the same; and also to the Chief Bailiff of the
said Liberty, and to every of them, Greeting,
(&c.) This Direction is double, for that there
is a Gaol for Defendants arrested in that Li-
berty by Writs out of Superior Courts, as well
as by Process out of the Court; the Court is
commonly called, *White-Chapel Court*; when
you have made your *Habeas Corpus ad faciend.
& recipiend.* then upon a Piece of Parchment
cut like a little Bail-Piece, which is called the
Fiat, Write this for the *Marshal's Court. Let Palace-Court
a Writ of Habeas Corpus be made for C.D. to
do and receive, returnable immediatly.**

Pleadwell, Attorney.

And then make a Ticket on Paper.

Palace-Court, ff. *Habeas Corpus for C. D.
to do and receive, returnable immediately.*

Pleadwell.

And the same *Fiat* and *Ticket* for London,
only put *London* in the Margent, and for
Stepney, To the Manor of Stepney in the Mar-
gent.

Then carry your *Habeas Corpus*, with the
Fiat and *Note*, to Mr. *Hawley* in the King's
Bench

Proceedings upon Habeas Corpus.

Bench Office, who will stamp the *Habeas Corpus*, and return it to you, and keep the *Fiat* and *Note*; you must pay him 7 s. 8 d. in the Vacation, and 6 s. 8 d. in Term Time. *Note*; the Parchment on which you write the *Habeas Corpus* must be stamp'd with a 5 s. Stamp, Seal your *Habeas Corpus* as you do other Writs, and carry it to the Inferior Court to be allowed.

You must observe, that formerly in those Inferior Courts, if the Debt was small, they entered the Action 4 l. 19 s. 0 d. the Reason was, that an Action under 5 l. originally was not to be removed, but tried there, but Industry had found out an Expedient for that; for if the Action was under 5 l. you brought another Action of 5 l. or above, at whose Suit you pleased against the same Defendant, and then the *Habeas Corpus* removed both Actions together at any Time before the Trial.

But this Method of removing Actions under 5 l. is now altered by the 12th of *Geo. 1.* which recites, that, Whereas the Stat. of 21 *Jac. 1.* for the more effectual preventing the Delays and Expence occasioned by the Removal of small Causes out of Inferior Courts, hath been of late evaded and rendered ineffectual by the Contrivance of vexatious Defendants, who by setting up a fictitious Action against themselves, for a pretended Demand of 5 l. or upwards, by such their Contrivance procure the smallest Actions to be removed by Writs of *Habeas Corpus* out of the Inferior Courts into the Superior Courts, whereby the Plaintiffs in such small Actions, which will not bear the Expence of such Superior Courts, are necessitated to

submit to the Loss of their just Demands; now King's
for preventing of such Abuses, and rendering Bench.
the Statute more effectual for the future; It is
Enacted, that from the 24th of June 1726,
the Judge of such Inferior Courts, as are de-
scribed in the said Statute, shall, or may, pro-
ceed in such Actions, Bills, Complaints, Suits or
Causes, as are therein specified, which appear,
or are laid not to exceed the Sum of 5 *l.* al-
tho' there may be other Actions against such
Defendant or Defendants, wherein the Plain-
tiff's Demands shall or may exceed the Sum
of 5 *l.* This Act to continue in Force five Years,
and to the End of the next Sessions of Parlia-
ment.

You pay 4 *s.* 10 *d.* for the Allowance of the
Habeas Corpus, and sometimes more, when
there are many Causes to be removed; for all
the Causes the Defendant stands charged with
above 5 *l.* must be returned with the *Habeas
Corpus*; some few Days after the Delivery, call
for the Return, and carry it with your Bail to
a Judge's Chamber, and there put in special
Bail, for which you pay 7 *s.* 4 *d.* except it be
against the Defendant as Executor or Admini-
strator, for then no special Bail is required
above.

A Bail-

King's
Bench.

*A Bail-Piece upon a Habeas
Corpus before a Judge.*

By Rule of
Court 28
Days Time is
allowed for
Exception.

Note; Double
12 d. Stamp.

The Term of, &c.

Somerſet, ſſ.

A. B. of, &c. is delivered to
Bail upon a Habeas Cor-
pus,
To C. D. of, (&c.) and E. F. of, (&c.)

Pleadwell }
Attorney. }

At the Suit of the Plaintiff in
the Plaint.

A Bail-

*A Bail-Piece upon a Habeas
Corpus before a Commissioner.*

Of the Term of, &c.

Berks, ff. **A.** B. of R. in the County
afore said, Gent. is deli-
vered to Bail. upon a Writ of
Habeas Corpus,

To C. D. of — in the County
J. S. At- of — Gent. and E. F. of —
torney. in the County afore said, Gent.

Taken and ac-
knowledged the
28th Day of
June in the
Year of our
Lord 1732, de
bene esse, be-
fore me, J. S. a
Commissioner.

*At the Suit of the Plaintiff in
the Plaint.*

Proceedings upon Habeas Corpus.

If Bail be put in upon *Habeas Corpus* returnable *immediately*; if it be in *Hillary* or *Trinity* Term, and the Declaration be delivered eight Days before the End of the Term, then the Defendant must plead to enter.

But if it be in *Michaelmas* Term, and the Declaration be delivered before the *Morrow of All Souls*, or in *Easter-Term*, before one Month of *Easter*, then the Defendant must plead to try the same Term.

If one come in upon *Habeas Corpus*, and Bail be given thereon, and the Plaintiff does not declare against him in two Terms, including the Term he was brought in, the Action and the Bail are discharged, and the Plaintiff non pross'd with Costs.

Also the Plaintiff's Attorney may serve the **Procedendo.** Defendant's Attorney with a Rule for a *Procedendo*, if Bail be not put in in Time, that is in six Days after Service thereof in the Vacation, and four in Term; any of the Judge's Clerks will give the Rule, and if Bail be not put in in Time, the Plaintiff takes out a Summons to attend the Judge, to shew Cause why a *Procedendo* should not be awarded; and if no Cause shewn on the third Summons, they make out a *Procedendo*, and carry back the Cause and try it in the Inferior Court. See the Writ of *Procedendo* herein after.

Returnable immediately. **Note**; If your *Habeas Corpus* be directed to any of the said Inferior Courts, or any other within Ten Miles of *London*, you make it returnable immediately, but if the Court be above Ten Miles distant, then the Return must be on a certain Day.

Note;

Proceedings upon Habeas Corpus.

239

Note; If the Defendant be actually a Prisoner in some of the Prisons belonging to these King's Bench. Inferior Courts, the Difficulty will be greater, for he cannot be discharged out of Prison 'till the Bail on the *Habeas Corpus* be accepted or justified in Court; and therefore in such a Case, the more ready and cheaper Way is to put in Bail to the Action in the Inferior Court which will discharge the Defendant, and then bring the *Habeas Corpus* to remove the Cause. But if the Defendant cannot find Bail, and would be removed to the *King's Bench* Prison, you must deliver the *Habeas Corpus*, and they will make you a Return, and send an Officer with the Defendant to a Judge's Chamber, and a *Committitur* must be writ in Parchment, and the Judge's Tipstaff takes the Prisoner into his Custody, and charges him to the *King's Bench* Prison; you pay 11 s. 8 d. at the Judge's Chambers; the Tipstaff will demand 10 s. for carrying the Defendant over, and you must agree with the Officer as cheap as you can for bringing him to the Judge's Chamber. If the Defendant be in the Custody of a Bailiff, or in *Newgate*, and wou'd be turned over to the *Newgate*. *King's Bench*, the Practice is the same; you deliver a *Habeas Corpus* directed to the Sheriff of *Middlesex*, and he will search his Office what Writs he hath against the Defendant, and make return of them; and then the Officer or Keeper of *Newgate* will carry the Defendant to the Judge's Chamber, and he will be turned over before the Judge in manner aforesaid. You must take Notice, with what Writs the Defendant is charged; for if it should be only with a Common Pleas Writ, then you cannot turn him over

King's
Bench.

over to the *King's Bench*, without charging him with an Action out of the *King's Bench*; so that you must make a Bill of *Middlesex*, or an Attachment of Privilege returnable in the *King's Bench*, and carry it to the Sheriff, and he will charge the Defendant in Custody, and return that Action with the other.

And the same Course is taken to remove a Prisoner from the *Fleet* to the *King's Bench*, only the Warden of the *Fleet* will often stand out two *Habeas Corpus's* at least before he will part with his Prisoner, and will also insist on his being paid his Prison Fees, before he brings up the Prisoner; but a Judge on a Summons will oblige the Warden to bring up the Prisoner without them.

Note; Before you deliver your *Habeas Corpus*, it is fit to speak to a Waiter, if the Defendant be in the *Fleet*, to carry him to the Judge's Chamber, and agree with him, and also to provide a Tipstaff in Readiness, and many do go to the Marshal and treat with him for Chamber-Rent; and sometimes for the Defendant's Liberty, upon Security before they carry him over.

Procedendo.

Before this
Writ is sued
forth be sure to
search all the
Judges Cham-
bers, and ask

the Clerks if they have no Bails by them that are not entered; you pay signing in Vac. 7 s. 8 d. Term 5 s. 8 d. Scaling 7 d.

GEORGE the Second, (&c.) To the Mayor, Aldermen, and Sheriffs of London, Greeting: Although We lately commanded you by our Writ, that you should have the Body

of C. D. detained in our Prison under your King's Custody, as it is said, under safe and secure Bench. Conduct, together with the Day, and Cause of his being taken and detained, by whatsoever Name the said C. was charged in the same, you should have before our trusty and well-beloved Sir Wm. Lee, Knt. our Chief Justice, (assigned to hold Pleas in our Court before us) at his Chamber, situate in *Serjeants-Inn* in *Chancery-Lane*, London; (or before Sir A. B. Knt. one of our Justices, assigned to hold Pleas in our Court before us at his Chamber, situate, (&c.) immediately after the Receipt of this Writ, (or before us at *Westminster* — the Day — as the Return was in the Habeas Corpus) to do and receive all and singular, those Things which our said Justice (or which our Court before us) of him then, and there should determine (*consider*) in that Behalf; **Yet** for certain Causes, now in our Court before us, specially moving us, We command you, and every of you, that in whatsoever Complaints or Suits against the said C. at the Suit of A. B. in our Court before you, or any of you, levied or affirmed, or before you, or any of you, now depending undetermined, you proceed with what Expedition you can; and in such manner proceed as according to the Law and Custom of our Kingdom of *England*, (or * our City of * *This Clause London* aforesaid) you shall see fit to be proceeded; our said Writ to you thereof before (*formerly*) directed to the contrary in any wise notwithstanding. *Witness, &c. (as in others.)*

This Clause is to be put in, when it is in London.

Procedendo.

Procedendo super Certiorari.

GEORGE the Second, (&c.) Greeting:
Whereas, we late'y by our Writ were willing, for certain Causes to be certified of a certain original Bill, &c. (*reciting the Certiorari in such Manner as the Habeas Corpus is before recited*) before us (*such a Day, &c.*) together with that Writ, that we might cause to be further done therein what we should see of Right ought to be done; *Yet* for certain Causes now in our Court before us, specially moving us, We command you, and every of you, that as well in the Complaints aforesaid, levied in our Court before you, or any of you, against the said C. at the Suit of the aforesaid A. as in the Attachments thereupon made in the Hands and Custody of E. F. do you proceed with what Speed you can, in such Manner as you shall see fit to be proceeded, according to the Law and Custom of our City aforesaid, (our said Writ of *Certiorari* to you formerly directed to the contrary thereof in any wise notwithstanding.) *Witness* Sir *William Lee*, Knt. (&c.)

Procedendo upon a Writ of Latitat.

GEORGE the Second, &c. To the Sheriffs of *London* Greeting: *Whereas* We lately commanded our Sheriff of *Middlesex*, that he should take C. D. if he might (*could*) be found in his Bailiwick, and keep him safely, so that he might have his Body before us at

I

Westminster

Westminster at a certain Day now past, to answer to *A. B.* of a Plea of Trespass, (or as the King's Bench. Cause of Action was in the Latitat.) And our said Sheriff of *Middlesex* at that Day returned to us, that the aforesaid *C.* was not to be found in his Bailiwick; whereupon on the Behalf of the aforesaid *A.* it was sufficiently attested in our Court before us, that the aforesaid *C.* skulked and ran up and down in our City of *London* (or the County to which the Latitat was directed.) And We thereupon lately commanded, that you should take him, if he might be found in your Bailiwick, and keep him safely, so that you might have his Body before us at *Westminster* (such a Day) to answer to the aforesaid *A.* of the Plea aforesaid. And now As in the Latitat. we are informed in our said Court before us, on the Behalf of the said *H. L.* that you have deferred (*delayed*) and yet do defer (*delay*) to proceed in a certain Plaint between the said *H.* and the aforesaid *C.* depending undetermined in our Court before you the said Sheriffs, by Reason of our said Writ, to the great Damage of the said *H.* And we being willing to do what is just in this Behalf, We command you, that you proceed with what Speed you can in whatsoever Complaints against the said *C.* at the Suit of the aforesaid *H. L.* before you, or any of you affirmed, and before you, or any of you, now depending undetermined, in such Manner as according to the Law and Custom of our City of *London* you shall see fit to be proceeded, (our Writ aforesaid to you, thereof lately directed in any wise notwithstanding.) Witness, (&c.)

Scire Facias.

Of SCIRE FACIAS.

*Scire Facias in Debt after a Year and
a Day to revive a Judgment.*

*You sign and
seal this Writ,
making out
and leaving a
Præcipe at
the Office.*

Signing 1 s.

8 d. Sealing

7 d.

GEORGE the Second, (&c.) To the Sher-
riff of *Middlesex*, Greeting: **W**hereas
A. B. Gentleman, lately in our Court before
us at *Westminster*, by Bill without our Writ,
and by the Judgment of the same Court re-
covered against *C. D.* Gentleman, otherwise
called, (&c.) a Debt of two hundred Pounds,
and also three Pounds for his Damages
which he hath sustained as well by Occasion
of the Detaining of that Debt, as for his
Costs and Charges by him put to about his
Suit in that Behalf, whereof the said *C. D.* is
convicted, as it appears to us of (*on*) Record.
AND now on the Behalf of the aforesaid *A.*
we have received Information in our Court be-
fore us, that altho' Judgment be thereupon
given, yet Execution for the Debt and Da-
mages aforesaid still remains to be made unto
him; whereupon the said *A.* hath humbly
besought us to provide a fit Remedy for him
in this Behalf: And we being willing to do
what is just in this Behalf, we command you,
that by honest and lawful Men of your Baili-
wick you make known to the said *C. D.* that
he be before us at *Westminster*, (*the Return*)
to shew if he hath or knows any Thing to
say for himself, why the aforesaid *A.* ought
not to have his Execution against him for
the

the Debt and Damages aforesaid, according to King's
the Force, Form and Effect of the Recovery Ber.ch.
aforesaid, if he shall see it expedient for him ;
and farther to do and receive what our said
Court before us shall then and there consider
of in this Behalf ; And have then there the
Names of them by whom you cause him to
know, and this Writ. *Witness, (&c.)*

*Scire Facias in Case on Assumpsit after
a Year and a Day.*

GEORGE the Second, &c. To the Sheriff of
S. Greeting : *Whereas* A. B. lately
in our Court before us at *Westminster*, by
Bill without our Writ, and by the Judgment
of the same Court recovered against C. D.
Twenty Pounds for his Damages which he
hath sustained as well by Occasion of the
Non-performance of certain Promises and Un-
dertakings lately made by the said C. to the
said A. as for his Costs and Charges by him
put to about his Suit in that Behalf, whereof,
&c. *(as before, inserting Damages, Costs and
Charges, instead of Debt and Damages.)*

Scire Facias in Trespass on the Case.

GEORGE the Second, *(&c. as before, unto)*
hath recovered against C. D. Twenty
Pounds for his Damages which he hath sustain-
ed as well by Occasion of a certain Trespass on
the Case lately committed by the said C. against
the said A. as for the Costs, *(&c. as before.)*

King's
Bench.

Scire Facias *in Trespass.*

GEORGE the Second, (*as before unto*) hath recovered against C. D. Twenty Pounds for his Damages which he hath sustained as well by Occasion of a certain Trespass lately committed by the said C. against the said A. as for his Costs, (&c.)

Scire Facias *against Tertenants*

Say *as before unto*, We command you, that by honest and lawful Men of your Bailiwick, you make known to the Tenants of all the Lands and Tenements which were of the aforesaid C. on, — next after — in the — Year of our Reign, on which the Judgment aforesaid was rendered, or at any Time afterwards, within your Bailiwick, that they may be before us at *Westminster* — Day — next after — to shew, &c. why the Debt and Damages aforesaid ought not to be levied (*made*) of those Lands and Tenements rendered to the aforesaid A. according to the Force, Form and Effect of the Recovery aforesaid, if, (&c.) and farther to do and receive what our said Court before us of them then and there shall consider of in this Behalf; And have there then, &c. (*as in others.*)

Scire Facias,
its Origin.

This Writ of *Scire Facias* was given by the Statute of *Westminster* 2. c. 45. and before that Statute, if the Plaintiff had not taken out

out his Execution upon a Judgment against the King's Defendant within a Year and a Day, he had Bench. no Remedy but a new Action of Debt on his Judgment; but now this *Scire Facias* may be sued out to revive it, but it must be directed into the County where the original Action was brought.

The Writ of *Scire Facias*, after a Year and a Day, may be had of Course against the Defendant without Motion; but if Judgment be above seven Years, and not above ten Years old, you may have a Rule at the Side-bar for a *Scire Facias* to revive it; but if it be above ten Years standing, the Plaintiff must move the Court to obtain a Rule for a *Scire Facias* before he can be able to make out such Writ; and in order to obtain such Rule, there must be an Affidavit of the Debt being unsatisfied, and the Judgment not vacated, and that the Defendant is living, and then the Court will grant you a Rule accordingly.

If the Plaintiff takes Execution within the Year, and it is not served, yet he may continue the same upon the Roll from Term to Term till it is served, and need not sue out any *Scire Facias*.

If the Defendant appear to this Writ of *Scire Facias*, and can shew good Cause, as a Release, Satisfaction, or any other just Cause, he may plead it in Discharge.

If the Sheriff return *Scire Feci*, and the Defendant upon the Return of the said *Scire Feci* do not forthwith appear and plead, after a Rule given with a Clerk of the Rules is out, the Plaintiff shall have present Execution.

See after, The Entry of the Judgment.

King's
Bench.

Nihil habet
returned.

But if the Sheriff return a *Nihil habet* upon the *Scire Facias*, you must give him an *Alias Scire Facias*, and get it returned in the same Manner, and each *Scire Facias* must lie four Days at least in the Office before their respective Returns, and there must be eight Days Distance between the Teste and Return of each *Scire Facias*; the first must be returned before the second is made out, and the second tested the Day of the Return of the first.

Sci. Fac. how
tested, and
made returna-
ble.

If there are not eight Days distant between the Teste and Return of each *Scire Facias*, the Court may quash them on a Motion, or the Defendant may demur thereto. 1 Lutw. 25. Salk. 599. When you have two *Nihils* returned, it amounts to a *Scire Feci*, and the Plaintiff may (after he hath given a Rule as before on the *Alias Scire Facias*, which is of four Days,) enter up Judgment of Course, and sue on what Execution he pleaseth.

See after, The Entry of such Judgment.

When a new
Sci. Fac. to be
issued.

Note; If you do not proceed upon a *Scire Facias* within a Year and a Day after it was taken out, you cannot after that proceed upon that Writ, but must sue out a new *Scire Facias*, (for the old Writ is discontinued) and it must be directed into the County where the original Action was brought. Where either Plaintiff or Defendant, or one of the Plaintiffs or one of the Defendants die, there cannot be any Execution sued out upon the Judgment until a *Scire Facias* sued out by the Heirs, Executors or Administrators, and Judgment thereupon. *Style's Pract. Reg.* 493.

See

See after, *Scire Facias* against the Bail, and King's the Entry thereof, with the Method of pro-Bench. ceeding against them.

Entry of two Scire Fac. with two Nihil returned, and by Judgment on Default.

THE Lord the King hath given in Charge to the Sheriffs of London his Writ closed in these Words, to wit, George the Second, (*&c. reciting the Writ of Scire Fac. verbatim, and adding the Teste*). Witness Sir William Lee, Knt. at Westminster, the — Day of — in the — Year of our Reign, At which Day (*the Return of the first Writ*) came (*comes*) the said (*Plaintiff*) in his proper Person before the Lord the King at Westminster, and the Sheriffs of London, to wit, A. B. Knight, and C. D. Knight, at that (*last mentioned*) Day, returned (*returns*) that the aforesaid (*Defendant*) had (*hath*) nothing in their Bailiwick where or by which they could (*can*) make known to him, nor is he to be found in the same; And the aforesaid (*Defendant*) did (*does*) not come: Therefore (*as before*) the Sheriffs of London is commanded, that by honest, (*&c.*) they make known to the aforesaid (*Defendant*) that he be before the said Lord the King at Westminster on — next after — (*Return of the Alias Scire Fac.*) to shew in Form aforesaid, if, *&c.* and further, *&c.* The same Day last mentioned is given to the aforesaid (*Plaintiff*) there, *&c.* At which Day last mentioned, before the Lord the King
at

King's
Bench.

at *Westminster* aforesaid, came (*comes*) the aforesaid (*Plaintiff*) in his proper Person, and the aforesaid Sheriffs of *London*, (*as before*) returned (*returns*) that the aforesaid (*Defendant*) had (*hath*) nothing in their Bailiwick where or by which they could (*can*) make known to him, nor is he to be found in the same: And the aforesaid (*Defendant*) at the same Day last mentioned, tho' duly summoned did (*does*) not come, but made (*makes*) Default: Therefore it is considered, that the aforesaid (*Plaintiff*) have Execution against the aforesaid (*Defendant*) for the Debt and Damages aforesaid, according to the Force, Form and Effect of the Recovery aforesaid, &c.

*Entry where Execution is by Default
on a Scire Feci upon a Scire Facias
after a Year and a Day.*

THE Lord the King hath given in Charge, &c. (*reciting the Writ as before*). At which Day (*the Return of the Writ*) before the Lord the King at *Westminster* came (*comes*) the aforesaid *Plaintiff* in his proper Person, and the Sheriff of C. to wit, A. B. Esq; at that Day last mentioned returned (*returns*) that by Virtue of the aforesaid Writ to him directed he made known to the aforesaid *Defendant*, by D. E. and F. G. honest and lawful Men of his Bailiwick, that he be before the Lord the King at the Day and Place aforesaid, to shew, &c. as within he was commanded; And the aforesaid *Defendant* so forewarned, and at the same Day last mentioned solemnly required,

Scire Facias.

required, did (*does*) not come, but made (*makes*) King's Default: Therefore it is considered, that the Bench. aforesaid (*Plaintiff*) may have Execution against him for the Debt and Damages aforesaid, according to the Force, Form and Effect of the Recovery aforesaid, &c.

Entry of Scire Facias against Executors after two Nihilis returned; Defendant appears by his Attorney, and pleads Nul tiel Record.

THE Lord the King hath given in Charge (*as before to the End of the Return of the second Scire Facias, viz.*) And the aforesaid Sheriff of M. (*as before*) returned, (*returns*) that the aforesaid B. had (*hath*) nothing in his Bailiwick where or by which he could (*can*) make known to him, nor is he to be found in the same: And the aforesaid B. at the same Day last mentioned, being duly summoned by J. S. his Attorney, likewise came (*comes*); And upon this the aforesaid E. as before prayed (*prays*) Execution against the aforesaid B. for his Debt and Damages aforesaid to be adjudged to him, &c. And the aforesaid B. saith, that the aforesaid E. ought not to have his Execution against him for his Debt and Damages aforesaid, because he saith, that there is not any such Record of the Recovery of the Debt and Damages aforesaid, as by the Writ aforesaid is above supposed: And this he is ready to verify: Wherefore he prays Judgment if (*whether*) the aforesaid

King's
Bench.

aforesaid *E.* ought to have his Execution against him for the Debt and Damages aforesaid, &c.

And the aforesaid *E.* saith, that (for any Thing by the aforesaid *B.* above in Pleading alledged) he ought not to be precluded from having his Execution against him for his Debt and Damages aforesaid, because he saith, that there is such a Record of the Recovery of the Debt and Damages aforesaid, as by the Writ aforesaid is above supposed, as appears in *Trinity* Term in the — Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. upon the — Roll: And this he is ready to verify by that Record; and prays that the Term and that Roll (*that the said Roll of the aforesaid Term*) may be here seen and inspected into by the Court of the Lord the King: And because the Court of the said Lord the King now here is not yet advised to give Judgment of and upon the Premises, a Day is thereon given to the Parties aforesaid, before the Lord the King at *Westminster*, until — next after — to hear their Judgment of that Issue, for that the Court of the said Lord the King here is not thereof yet (*advised*), &c.

Note; The Master is to sign Judgment upon the Rolls.

Scire Facias against Executors upon
Judgment recovered in the Life of
the Testator.

GEOGE the Second, (&c.) To the Sher-
riff of S. Greeting: **Whereas** A. B.
lately in our Court, (&c. as before) as it
appears to us of Record; **And afterwards,**
to wit, (* such a Day and Year) the aforesaid C. * *The Date of*
at D. in your County made his last Will and *the Will.*
Testament in Writing, and appointed E. F.
Executor (*thereof*) of his Testament aforesaid,
and afterwards there died; After whose Death
the aforesaid E. F. took upon himself the Bur-
den of the Execution of the Testament aforesaid,
and hath proved that Testament in due
Form of Law: **And now** on the Behalf of the
said A. we have received Information in our
Court before us, that altho' Judgment be thereof
given, yet Execution of the Debt and Damages
aforesaid (*or as the Action is*) yet remains to
be made to him; wherefore the said A. hath
intreated us for a fit Remedy to be provided
of him in this Behalf; And we being willing
that Justice be done in this Behalf, we com-
mand you, that by honest, (&c.) you make
known to the aforesaid A. B. that he be be-
fore us (*at Westminster*) on *Wednesday*, (&c.)
to shew if he knows or hath any Thing to say
for himself, why the aforesaid A. ought not
to have his Execution of the Goods and Chat-
tels which were of the aforesaid C. D. at the
Time of his Death, in his Hands to be admi-
nistred, according to the Force, Form and Ef-
fect

Scire facias.

fect of the Recovery aforesaid, if it shall seem expedient to him, and further to do, (&c.) And have, (&c. as in others.)

Scir. Fac. against an Administrator upon a Judgment recovered against the Intestate.

GEORGE the Second, (&c. as before unto) as it appears to us of Record; And afterwards, to wit (*such a Day*) the aforesaid C. at D. in your County died Intestate, after whose Death Administration of all and singular the Goods and Chattels, Rights and Credits, which were of the aforesaid C. at the Time of his Death, in due Form was committed by — (to whom the Granting of Administration aforesaid in this Behalf of Right belonged,) to one C. C. Widow, — (*such a Day*) in the — Year of our Reign, at D. aforesaid; And now on the Part, (&c. as last before to the End.)

*There is no
need to mention
the Day or
Year.*

Note; If the Judgment was had against Executor or Administrator, then the Judgment must be entered thus.

—— Of the Goods and Chattels which were of the aforesaid Testator (or *Intestate*) in the Hands of the aforesaid Executor (or *Administrator*) to be administered, if he hath so much in his Hands, and if he hath not so much in his Hands, then the Damages aforesaid to be administered of the proper Goods and Chattels of him, (*the Executor or Administrator, &c*)

Scire

Scire Facias against the Bail.

Next, We shall shew the Method of proceeding against the Bail by *Scire Facias*, with the Forms and Entries thereof.

Where Bail are put in to an Action brought in this Court, the *Scire Facias* against them, must be always sued out in *Middlesex*, because all Bails to Actions are supposed to be taken in Court, which is in *Middlesex*. *In what County sued out.*

But in Case of a Recognizance entered into by Bail upon a Writ of Error, if it be entered to be taken at a Judge's Chamber in *London*, then the *Scire Facias* must be there sued out. *Stile's Reg. 499.*

There must be also eight Days inclusive between the *Teste* and Return of each *Scire Facias* against the Bail, and not one of them four or five Days, and the other of them twelve, and each *Scire Facias* must lie four Days at least in the Sheriff's Office before their respective Returns, or you need have but one *Scire Facias*, if a *Scire Feci* be returned thereupon by the Sheriff. *How Tested and returnable.*

But first, before a *Scire Facias* issues to the Bail, there must be a *Cap. ad Satisfac.* directed into the County where the Action is laid against the principal Defendant, and a *Non est inventus* returned upon it.

Also there must be eight Days exclusive between the *Teste* and Return of such *Capias ad Satisfaciend.* to warrant a *Scire Facias* against the

King's
Bench.

the Bail, and the *Capias* must lie in the Sheriff's Office four Days exclusive before the Return be out. *Salk.* 559.

After the Return of it, by *Non est inventus*, and filed, you make out the *Scire Facias*, as is hereafter set forth, and the Entry thereupon.

Time of Surrendering
Defendant on
Scire Facias
in Discharge of
the Bail.

Note, That if the Defendant does not render himself, before or upon the Day of the Return of the *Scire Facias*, with a *Scire Feci*, or before or upon the Return-Day of the Second *Scire Facias*, he can never do it after, and you give a Rule of Course with the Clerk of the Rules after the Return of the *Scire Feci*, or the second *Scire Facias*; and if the Defendant do not plead before the Rule is out, you may have a *Fi. Fa.* or an *Elegit*, against the Bail, and enter the Judgment on the Roll, as see after. But it is said, that to intitle yourself to a *Ca. Sa.* against the Bail, you must first sue out a *Fieri Fac.* and get a *Nulla bona* returned thereupon.

Or Execution
awarded.

If the Defendant is surrendered in Time, as aforesaid, you must enter such Surrender in the Marshal's Book, with Mr. *Lantrow* the Clerk of the Dockets, and give the Plaintiff's Attorney Notice of such Surrender in Writing, — then take the Bail-Piece from the Judge's Chamber, if it was not before filed, and afterwards apply to the Clerk of the Papers of the *King's Bench* Prison, for a Certificate of the Defendant's Surrender, and then carry the Bail-Piece with the Certificate to the Master of the *King's Bench* Office, and he will mark an *Exoneretur* on the Bail-Piece, and then deliver it to Mr. *Hawley*, Signer of the *Latitats*, and he will file it, and so the Bail are intirely discharged.

Note ; If the Defendant dies before the Re- King's
turn of the *Scire Feci*, or of the second *Scire Bench*.
Facias, the Bail are discharged by his Death, *When Bail dis-*
and upon a Motion, the Court will grant a Rule *charged by*
accordingly. *Death of De-*
fendant.

You must enter the first *Scire Facias* on the *How entred on*
Roll of that Term, when the first *Scire Facias the Roll.*
is returnable, and so award your other *Scire*
Facias on the same Roll, and continue the Pro-
ceedings and Pleadings, if any, till Judgment be
entered, all on the same Roll. — And if the
Plaintiff please, he may levy Part of the Debt
upon the Defendant's Goods first, and after re-
sort back to the Bail for the Residue; but if
he take the Defendant's Body in Execution, he
cannot meddle with the Bail at all.

Scire Facias against the Bail in Debt.

GEORGE the Second, (*&c.*) To the Sheriff
of *M.* Greeting : *Whereas* *A. B.* lately
in our Court before us at *Westminster*, by Bill
without our Writ, (*&c. as in Debt unto*) as it
appears to us of Record. **And now** we have
received Information in our Court before us on
the Behalf of the said *A. B.* that, altho' Judg-
ment be thereof given, yet Execution of the
Debt and Damages aforesaid for him remains
to be made to him. **And whereas** *E. F.* of,
(*&c.*) Gent. and *G. H.* of the same, Esq;
heretofore, to wit, * in the Term of — in * *The Term*
the Bail was
put in ; take Care that the Names and Additions of the Bail are exactly
the same in the Writ, as are on the Bail Piece taken before the Judge.

Quære, If the Bail was taken after the Continuance Day, if it is not
Bail of the preceding Term, and if it must not be so mentioned in the
Scire Fa. One *Scire Fac.* with Notice sufficient.

King's
Bench.

the ——— Year of our Reign, personally came into our said Court before us at *Westminster*, and became Sureties and Bail, and each of them by himself became Surety and Bail for the aforesaid *C. D.* that if the aforesaid *C. D.* should happen to be convicted in the Plea aforesaid, then the said Bail granted, and each of them by himself did grant, that as well the said Debt, as all such Damages, Costs, and Charges, which should be adjudged to the said *A. B.* in this Behalf, should be made of their and each of their proper Lands and Chattels, and levied to the Use and Behoof the said *A. B.* if it should happen that the said *C. D.* should not pay the Debt and Damages, Costs and Charges to the aforesaid *A. B.* or render himself on that Occasion to the Marshal of our Prison of the Marshalsea before us; Yet the aforesaid *C. D.* hath not yet paid the Debt and Damages, Costs and Charges aforesaid, to the aforesaid *A. B.* nor hath he rendered himself to the Prison of the Marshal of our *Marshalsea* before us, according to the Form and Effect of the Recognizance aforesaid, as (on the Insinuation of the aforesaid *A. B.*) we have received Information in our Court before us; wherefore the said *A. B.* hath supplicated us to provide a proper Remedy for him in this Behalf; and we being willing that what is just should be done therein do command you, that by honest and lawful Men of your Bailiwick, you make known to the aforesaid *E. F.* and *G. H.* that they be before us at *Westminster* (*such a Day*) to shew if they know or have any Thing to say for themselves, why the aforesaid *A. B.* ought not to have his Execution against them, for the Debt
and

and Damages aforesaid, according to the Force, King's Form and Effect of the said Recognizance, if it Bench. shall seem expedient to him; and further, to do and receive all and singular those Things, which our said Court before us, shall then and there consider of them in this Behalf; And have there then the Names of those by whom you shall have made known, and this Writ. Witness, (&c.)

Scire Facias in Case against the Bail.

GEORGE the Second, (&c.) Whereas *A. B.* lately in our Court (*as above*) hath recovered against *C. D.* one hundred Pounds for his Damages, which he has sustained as well on Occasion of the Non-Performance of certain Promises and Undertakings lately made to the said *A.* by the said *C.* as for his Costs and Charges by him put to about his Suit, (&c. *as in Debt unto*) as it appears to us of Record: And altho' (&c.) And whereas (&c. *as before to the End, only instead of Debt, Damages, Costs and Charges, you only say, Damages, Costs and Charges.*)

Before you make out *Scire Facias* against Declaration the Bail, see that the Declaration be entered *entered before* upon the Rolls at *Westminster*, of the same *Sci. Fa. a-* Term the Declaration was of, and after the *gainst Bail.* Declaration is entered *Verbatim*, you must enter up the Recognizance against the Bail thus in Case (to wit)

Scire Facias.

King's
Bench.
Entry of Re-
cognizance a-
gainst Bail.

In Case.

And the aforesaid (*Defendant*) by — his Attorney comes and defends the Force and Injury when, &c. and upon this (*the Bail with their Additions*) come in their proper Persons before the Lord the King at *Westminster*, and become Sureties and Bail, and each of them by himself becomes Surety and Bail for the aforesaid (*Defendant*) that if the said (*Defendant*) shall happen to be convicted in the Plea aforesaid, then they the same Bail agree, and each of them for himself agrees, that all such Damages, Costs and Charges, which shall be adjudged to the aforesaid (*Plaintiff*) in this Behalf, shall be levied of the Lands and Chattels of them and every of them, and to the Use and Behoof of the said (*Plaintiff*) if it shall happen that the said (*Defendant*) shall not pay to the said (*Plaintiff*) his Damages, Costs and Charges, or render himself on this Occasion to the *Marsalsea* Prison of the Lord the King before the King himself.

Some enter this Recognizance with an Imparlance, which ought to be but in some special Cases, for Bail may be given after an Issue joined, and after the Recognizance is entered up.

*The Entry of two Scire Facias's against
the Bail, by Default in Case.*

THE Lord the King hath given in Charge to the Sheriff of *Middlesex* his Writ closed in these Words, (*to wit*) George the Second, &c. (*Reciting the Writ of Scire Facias*)
Verbatim

Verbatim, and adding the Teste). Witness King's
Sir William Lee, Knt. at Westminster, the — Bench.

Day of June in the — Year of our Reign.

At which Day, to wit, Tuesday (the Return
in the Scire Facias) the said (Plaintiff) comes
in his proper Person before the Lord the King
at Westminster, and the said Sheriff of Middle-
sex, to wit, A. B. Knight and C. D. Knight, at
that Day last mentioned, returns that the afore-
said (the Bail) have nothing, nor hath either
of them any Thing in his Bailiwick, where or
by which he could make them, or either of
them to know, and that the aforesaid (the Bail)
are not, nor is either of them to be found in
the same, and the aforesaid (the Bail) come
not, nor does either of them come, but maketh
Default: Therefore as before the Sheriff of
the County of Middlesex is commanded, that
by honest and lawful Men of his Bailiwick he
make known to the aforesaid (the Bail) that
they be before the Lord the King at Westmin-
ster, on Friday (the Return in the second Scire
Facias) to shew in Form aforesaid, if, &c. And
further, &c. The same Day last mentioned is
given to the aforesaid (Plaintiff) there, &c.
At which Day last mentioned, before the
Lord the King at Westminster aforesaid, comes
the aforesaid (Plaintiff) in his proper Person,
and the aforesaid Sheriff of the said County of
Middlesex (as before) returns, that the aforesaid
(the Bail) have nothing, nor hath either of
them any Thing in his Bailiwick, where or by
which he could make them, or either of them
to know; and that the aforesaid (the Bail)
were not, nor was either of them to be found
in the same. And the aforesaid (the Bail)

Scire Facias.King's
Bench.Execution a-
warded.

Default.

do not come, nor does either of them come, but maketh Default: Therefore it is considered, that the aforesaid (*the Plaintiff*) may have his Execution against (*the Bail*) and each of them, for the Damages, Costs and Charges aforesaid, according to the Force, Form and Effect of the Recognizance aforesaid, by Default of them (*the Bail*).

In proceeding on *Scire Facias* against the Bail, if the Bail appear, deliver a Declaration on a double Penny Stamp, give a Rule to plead, and demand a Plea, as in other Cases.

A Declaration on a Scire Facias.

*Of the Term of — in the — Year
of the Reign of King George the Se-
cond.*

London; ff. **O**UR Lord the King hath given in Charge to the Sheriffs of London his Writ closed in these Words, (*to wit*) George the Second, by the Grace of God, &c. (*as in the Entry before to the End of the Return of that Writ to which the Bail appear*): And the said E. F. and G. H. at that Day being solemnly required came by M. P. their Attorney: Upon which the said A. B. prays, that Execution of the Debt and Damages aforesaid may be adjudged to him according to the Force, Form and Effect of the said Recognizance, &c.

Plea

*Plea to a Scire Facias against the Bail,
That no Ca. Sa. was sued out and
returned.*

AND the aforesaid *A. B.* and *C. D.* by
E. F. their Attorney come and pray
Judgment of the Writ of *Scire Facias* aforesaid,
because they say, that after the rendring
(giving) of the Judgment aforesaid against the
aforesaid (*Defendant*) had in Form aforesaid,
and before the issuing of the Writ of *Scire Facias*
aforesaid against the aforesaid *A. B.* and
C. D. no Writ of *Capias ad Satisfaciendum*
of and upon that Judgment for the aforesaid
(*Plaintiff*) against the aforesaid (*Defendant*)
was in due Manner prosecuted and returned;
which ought to have been done (according to
the Custom of that Court, from the Time
whereof the Memory of Man is not to the
contrary used and approved of in the same
Court,) before any Writ of *Scire Facias* against
the aforesaid *A. B.* and *C. D.* ought to have
issued: And this they are ready to aver:
Wherefore they pray Judgment, and that the
Writ of *Scire Facias* aforesaid may be quashed.

Replication.

And the aforesaid (*Plaintiff*) saith, that for
any Thing before alledged, of his Execution
aforesaid of the Debt and Damages aforesaid
acknowledged by the said *A. B.* and *C. D.*
in Form aforesaid, under Pretence of the

Scire Facias.

Recognizance aforesaid, the Writ of *Sci' Fa.* ought not to be quashed, because he saith, that after the rendering (*giving*) the Judgment aforesaid against the aforesaid (*Defendant*) had in Form aforesaid, and before the issuing of the aforesaid Writ of *Scire Facias* against the aforesaid *A. and C.* to wit, (*the Day of the Teste of the Capias*) aforesaid, a certain Writ of *Capias ad Satisfaciendum* was sued out of the Court of the said Lord the King before the King himself at *Westminster*, against the aforesaid Defendant, directed to the then Sheriffs of *London*, by which said Writ the said Lord the King commanded the then Sheriffs of *London*, that they should take the aforesaid (*Defendant*) if he might be found in their Bailiwick, and safely keep him so that they might have his Body before the said Lord the King, (*the Return of the Writ*) to satisfy the aforesaid (*Plaintiff*) for 100 *l.* Debt and also 10 *l.* which the aforesaid (*Plaintiff*) in the Court of the said Lord the King before the King himself at *Westminster*, hath sustained as well by Occasion of detaining that Debt, as for his Costs and Charges by him put to about his Suit in that Behalf, whereof the aforesaid Defendant was convicted, as appears to us on Record; And that the aforesaid Sheriffs of *London* should have there then that Writ aforesaid: Which said Writ of *Capias ad Satisfaciendum* of and upon that Judgment for the aforesaid Plaintiff, against the aforesaid Defendant, was in due Manner prosecuted, and before the Return of the same Writ was in due Manner delivered to the aforesaid Sheriffs of *London*. Upon which the aforesaid Plaintiff, at the aforesaid Return of
the

the same Writ, came in his proper Person; King's and then the Sheriffs of *London*, to wit, (*&c.*) Bench. at that Day sent their Return, that the aforesaid Defendant was not to be found in their Bailiwick; as by the aforesaid Writ of *Ca. Sa.* and the Return thereof in the same Court of the said Lord the King before the King himself at *Westminster*, among the Files of Writs of *Ca. Sa.* in the aforesaid Court of the said Lord the King before the King himself at *Westminster* remaining filed of Record, more fully and clearly appears: And this he is ready to verify: Wherefore the aforesaid (*Plaintiff*) prays Execution for the aforesaid Debt and Damages aforesaid in Form aforesaid acknowledged, by Pretence of the Recognizance aforesaid to be adjudged to him, *&c.*

Another Plea to a Scire Fa. against the Bail.

Whereupon come *A. B.* and *C. D.* by *E. F.* their Attorney, and say, that the aforesaid (*Plaintiff*) ought not to have his Execution against them for the Debt and Damages aforesaid, because they say, That there is no such Record of the Recognizance aforesaid, as the aforesaid Plaintiff by his Writ above doth suppose: And this they are ready to verify: Wherefore they pray Judgment if the aforesaid Plaintiff ought to have his Execution against them for the Debt and Damages aforesaid, *&c.*

Nul tiel Record.

Replication.

And the aforesaid (*Plaintiff*) saith, that for any Thing by the aforesaid *A. B.* and *C. D.*,
above

King's
Bench.

above in Pleading alledged he ought not to be precluded or retarded from having his Execution against them for the Debt and Damages aforesaid, because he saith, That there is such a Record of the Recognizance aforesaid as he by his Writ aforesaid above hath supposed: And this he is ready to verify: Wherefore the aforesaid (*Plaintiff*) prays Execution of the Debt and Damages aforesaid, in Form aforesaid acknowledged by Pretence of the Recognizance aforesaid, to be adjudged to him, &c.

Otherwise thus:

— And this he is ready to verify by the Record of the Recognizance aforesaid, as appears in the Court of the said Lord the King before the King himself at *Westminster*, in the aforesaid Term of — in the 66th Roll. And upon this the aforesaid Plaintiff prays, that the Record of the Recognizance aforesaid by the Court here may be seen and inspected, &c.

Acknowledgment of Restitution.

— Afterwards, to wit, on *Wednesday* next after — in the — Year of the Reign of the Lord George the Second, now King of Great Britain, &c. before the said Lord the King at *Westminster*, comes the aforesaid I. by R. G. his Attorney, and acknowledgeth himself to have had Restitution from the aforesaid

said *W.* of all Sums of Money which he the King's
same *J.* by Occasion of the Judgment afore Bench.
said lost: Therefore the said *W.* of all such
Sums of Money is thereupon discharged, &c.

Of superseding Actions, and the Forms of Superfedeas's.

BY Rule of Court made *Trin. 2 Geo. 1.* It
is ordered, that if any Defendant shall
be committed to the Custody of the Marshal
of this Court, or shall be charged in Custody
of the said Marshal, or shall be arrested and
committed (by Virtue of the Process of this
Court) to the Custody of any Sheriff or other
Officer whatsoever, at the Suit of any Plain-
tiff, and shall so remain in Custody two Terms,
and the Plaintiff shall not declare against such
Defendant in that Time, then such Defendant,
after the End of the second Term after such
Imprisonment, shall be discharged out of the
Prison in which he was so detained upon fi-
ling common Bail, to be signed by one of the
Judges of this Court, without giving Notice to
the Plaintiff or his Attorney; and if any Plain-
tiff shall declare against such Defendant, a
Prisoner in Custody of the Marshal of this
Court, or any Sheriff or other Officer, and
shall not proceed to Trial or Judgment within
three Terms next after such Declaration de-
livered; or if any Plaintiff shall obtain Judg-
ment in this Court in any Action against such
Defendant remaining in Prison, and shall not
charge him in Execution upon Judgment so
obtained

King's
Bench.

obtained within two Terms next after such Judgment so had and obtained, then such Defendant, so remaining in Prison, may file Bail, or prosecute a Writ of *Superfedeas* out of this Court for his Discharge out of Custody, to be allowed by one of the Judges of this Court, if the Plaintiff or his Attorney, on Notice to one of them given by the Defendant's Attorney, (and Affidavit made of such Notice) shall not appear before the said Justice, and shew Cause against Filing Bail or Obtaining such Writ of *Superfedeas*.

To be intitled to the Writ of *Superfedeas*, you must get a Certificate from the Sheriff in whose Custody the Defendant is, that there is no Declaration delivered against him in his Custody, or *Habeas Corpus* brought, and then get a Certificate from the Clerk of the Declarations at the King's Bench Office, that no Declaration is filed, afterwards make out a Common Bail-Piece with this Addition; *because the Plaintiff hath not declared within two Terms, let a Writ of Superfedeas be made;* which the Judge signs, and is the Authority for the Signing the Writ, and at the same Time you sign the Writ you file the Certificates, then seal and carry the Writ to the Sheriff, who thereupon will make out a Discharge for the Defendant to the Keeper of the Prison.

If the Defendant be in Custody of the Marshal of the King's Bench Prison, and no Declaration delivered within two Terms, you get a Certificate thereof from the Clerk of the Papers of the King's Bench Prison, and from the Clerk

Clerk of the Declarations, and thereupon a King's Judge will order Common Bail to be filed, and Bench. upon a Certificate thereof the Marshal will discharge the Defendant without a *Superfedeas*.

If a Declaration hath been delivered against a Defendant in Custody of any Sheriff or other Officer, and no further Proceedings had according to the Rule, then upon taking out and serving on the Plaintiff's Attorney a Summons from a Judge, to shew Cause why a Writ of *Superfedeas* should not be granted to discharge the Defendant out of Custody for Want of Prosecution, the Judge will, if Cause be not shewn to the contrary, order such Writ accordingly on filing common Bail.

But if a Defendant be in Custody of the Marshal, and no Prosecution as before, then on a Summons and Service thereof, and no Cause being shewn to the contrary, the Judge will order the Defendant to be discharged on filing common Bail without any Writ of *Superfedeas*.

Superfedeas for not declaring in two Terms.

GEORGE the Second, (&c.) To the Sheriff of S. Greeting: **Whereas** we lately commanded you by our Writ, that you should take *A. B.* if he might be found in your Bailiwick, and safely to keep him, so that you might have his Body before us at *Westminster* on *Wednesday* next after three Weeks
A Superfedeas is a Writ to command or request the Parties to whom it is directed to stay or forbear the doing of that which in Appearance of Law might be done, were it not for the Cause whereupon the Writ is granted.

Superfedeas.

Weeks of *St. Michael* last past, to answer to *F. G.* Gent. of a Plea of *Trespas*s, and also of a Bill of the said *F.* against the said *A.* for one hundred and twenty Pounds Debt, to be exhibited according to the Custom of our Court before us: **And** because the said *F.* hath not declared against the said *A.* within two Terms, by which the said *A.* came and filed common Bail in our said Court before us, at the Suit of the aforesaid *F.* in the Plea aforesaid: **Therefore** we command you, that you wholly cease from taking, arresting or imprisoning the said *C. D.* or any Ways molesting him on that Occasion at the Suit of the said *F.* in the Suit aforesaid; And if you have taken the said *C.* and do detain him in Prison on that Occasion, and no other, that then you cause him to be discharged without Delay from the Prison wherein he is so detained, at your Peril. **Witness,** (&c.)

Superfedeas upon the Defendant's filing Common Bail by Order of a Judge.

George the Second, (&c.) **To** the Sheriff of *Middlesex*, Greeting: **Whereas** it was lately commanded you, that you should take *M. N.* if she might be found in your Bailiwick, so that you might have her Body before us at *Westminster* on *Wednesday* next after three Weeks of *St. Michael*, to answer to *J. K.* of a Plea of *Trespas*s, and also of a Bill of the said *J. K.* against the said *M. N.* for one hundred Pounds upon Promise, according

cording to the Custom of our Court before King's us to be exhibited: And because the said *M. Bench.* came into our Court before us, and hath put in Common Bail at the Suit of the aforesaid *J. K.* in the Plea and Bill aforesaid: **Therefore** we command you, that you wholly cease from taking, attacking or imprisoning the said *M.* or any Ways molesting her on that Occasion; And if you have taken the said *M.* and do detain her in Prison on that Occasion, and not on any other, then without Delay you cause her the said *M.* to be discharged out of the Prison in which she is so detained, at your Peril. **Witness,** (&c.)

If a privileged Person, as an Attorney, &c. is sued in any Jurisdiction foreign to his Privilege, he may have a *Superfedeas*.

Superfedeas for one of the Clerks of the Chief Clerk.

GEORGE the Second, (&c.) To the Mayor, Aldermen, and Sheriffs of our City of London, Greeting: **Whereas** as well on Account of our Royal Dignity, as on the ancient Custom according to the same in Times past used and hitherto approved of, It hath been upheld and maintained, that all and singular our Chief Clerks, appointed to enrol the Pleas in our Court before us, and their Clerks for the Time being, nor during the whole Time aforesaid were accustomed to be drawn or compelled to answer any secular Judge elsewhere than in our Court before us,
upon

Superfedeas.

upon any Pleas or Plaints, (Pleas of free Tenement (*Freehold*) only excepted): And now on the Part of *R. G.* Gent. one of the Clerks of — our Chief Clerk for inrolling the Pleas in our Court before us, we have received Information, that notwithstanding the Dignity and Custom aforesaid, certain evil disposed Persons, little regarding the Dignity and Custom aforesaid, have drawn into Plea the said *R. G.* in our Court before you, on Pre-
tence of divers Plaints before you levied against the said *R.* to the manifest Disparagement and Lessening of our Dignity and Custom aforesaid, and to the great Loss and Grievance of the said *R.* That if it be permitted, it may happen to others hereafter a pernicious Example; Therefore we command you by firmly injoyning, that you forbear, and every of you altogether forbear, proceeding further before you or any of you in the Plaints aforesaid, or any of them, you telling to the Parties prosecuting the said Plaints before you in Form aforesaid, that they may come to our Court before us to obtain Justice there in that Behalf, if it seems expedient to them. *Witness, (&c.)*

*Superfedeas on a Habeas Corpus after
Procedendo.*

GEORGE the Second, (&c.) To the Mayor, Aldermen, and Sheriffs of *London*, Greeting: Altho' we lately commanded you by our Writ, that the Body of *A. B.* detained in our Prison under your Custody, as it is said, together with the Day and Cause of his taking
and

and detaining, by whatsoever Name the said *A. B.* King's might be charged in the same, you should have Bench. under safe and secure Conduct before our beloved and faithful *C. D.* Knight, one of our Justices assigned to hold Pleas before us at *Serjeants-Inn* in *Chancery-lane*, *London*, immediately after the Receipt of that Writ, to do and receive all and singular those Things which our said Justices shall then and there consider of him in that Behalf; And altho' for certain Causes us in our Court before us especially moving, we lately commanded you and every of you, that in whatsoever Complaints levied or affirmed against the said *A.* at the Suit of *E. E.* in our Court before you or any of you, now (*then*) depending undetermined, you should proceed with what Speed you could, you should likewise proceed as, according to the Law and Custom of our Kingdom of *England* and our City of *London*, you should see fit to be proceeded, (our Writ of *Habeas Corpus* aforesaid to you before therein directed to the contrary in any wise notwithstanding.) And because the aforesaid Writ of *Procedendo* hath issued improvidently (*irregularly*), and because the same *A.* in our Court before us hath found sufficient Bail to answer the aforesaid *E. F.* in the Complaint aforesaid: Therefore we command you, that you wholly cease from all further Prosecution in the Complaint aforesaid by Virtue of the said Writ of *Procedendo* at your Peril. Witness, (&c.)

Note ; If the Defendant appear by *Superse- Appearance by*
deas, (as he may without Bail *, tho' the Ac- *Superfedcas.*
 tion be 500 *l.*) then he enters an Appearance * *Quare,*
 T with

Superfedeas.

with the Philazer, and you declare against him as by Original, *A. B. late of C. in the County aforesaid* — was attached, &c. and the Defendant's Attorney pays the Plaintiff's Attorney 4*d.* per Sheet, and 4*d.* for every Sheet of the Issue, and all the Writs and Executions are returnable *wheresoever*, &c.

Superfedeas for the Defendant taken by the late Sheriff, because he hath put in Bail.

GEORGE the Second, (&c.) To the Sheriff of N. Greeting: **Whereas** we lately commanded the late Sheriff of your County by our Writ, that he should take *A. B.* if he might be found in his Bailiwick, and should keep him safely, so that he might have his Body before us at *Westminster* on *Wednesday* next after — in the — Year of our Reign, to answer to *C. D.* of a Plea of Trespass, and also of a Bill of the said *C.* against the said *A.* for a Debt of Twelve Pounds, according to the Custom of our Court before us to be exhibited; And the said *A.* by Virtue of our Writ aforesaid was taken and is yet detained in our Prison under your Custody; **Yet** because the aforesaid *A.* hath put in Bail in our Court before us according to the Custom of our said Court, to answer the aforesaid *C. D.* of the Plea and Bill aforesaid: We command you, that if the said *A.* is detained in our Prison under your Custody on that Occasion, and not on any other, that then without Delay you cause the said *A.* to be discharged from
that

that Prison wherein he is so detained, and that King's
you permit him to go at large at your Peril. Bench.
Witness, (&c.)

Replevin.

Somerſet, ſſ. **A.** B. was ſummoned to an-
ſwer C. D. of a Plea where-
fore he took the Cattle of the ſaid C. and hath
unjuſtly detained them againſt Gages and
Pledges, &c. And whereupon the ſaid C. by
R. G. his Attorney complains, that the afore-
ſaid A. the firſt Day of *May* in the — Year
of the Reign of the Lord *George* the Second,
now King of *Great Britain*, &c. at S. in the
County aforeſaid, in a certain Place there called
Spring Cloſe, took the Cattle of the ſaid C. to
wit, two Oxen and three Cows, and hath un-
juſtly detained them againſt Gages and
Pledges, until &c. Wherefore the aforeſaid C.
ſaith that he is injured, and hath Damage to
the Value of 20 *l.* And thereon he brings this
Suit, &c.

A *Replevin* ought to be certain in ſetting
forth the Number and Kinds of the Cattle di-
ſtrained, or elſe it is not good; for if it be un-
certain, the Sheriff cannot tell how to make
Deliverance of the Cattle, if a Writ be di-
rected to him for that Purpoſe; therefore it
ought to be expreſſly mentioned to that In-
tent in the *Replevin*.

Avowry.

Arrear on a Lease.

AND the aforesaid C. by R. E. his Attorney comes and defends the Force and Injury, when, &c. and well avows the taking of the Cattle aforesaid in the aforesaid Place wherein, &c. and justly, &c. because he saith, that before the aforesaid Time wherein the taking of the aforesaid Cattle is supposed to be done, and at the Time wherein they were so taken, he himself was seised of one Messuage, forty Acres of Land, six Acres of Meadow, twenty Acres of Pasture and four Acres of Wood, with the Appurtenances in S. aforesaid, whereof the aforesaid Place wherein, &c. is, and at the aforesaid Time wherein, &c. was, Parcel in his Demesne as of Fee; And being so seised thereof before the aforesaid Time wherein, &c. to wit, the eighteenth Day of *June* in the sixth Year of the Reign of the now King, at S. aforesaid, did demise the aforesaid Tenements with their Appurtenances whereof, &c. to the aforesaid A. B. to have and to hold to him and his Assigns from the Feast of *St. Michael* then next following, to the End and Term of seven Years from thence next ensuing; yielding and paying therefore yearly to the aforesaid C. D. ten Pounds, at the Feast of the Annunciation of the Blessed Virgin *Mary*, by equal Portions; by Virtue of which said Demise the aforesaid A. B. before the aforesaid Time wherein, &c. in and upon the Tenements aforesaid with their Appurtenances

nances whereof, &c. entered, and was thereof King's
possessed, and because fifteen Pounds of the Bench,
Rent aforesaid for one whole Year and the
Half of a Year, ending at the Feast of the
Annunciation next before the aforesaid Time
wherein, &c. were in Arrear, and not paid to
the said C. D. at the same Time wherein, &c.
the said C. D. for the said fifteen Pounds of
that Rent so being in Arrear to the said C.
doth well avow the Taking of the Cattle aforesaid
in the aforesaid Place wherein, &c. and
justly, &c. as in Parcel of the Tenements aforesaid,
which with the Appurtenances, were
bound, and charged to be distrained on by
the said C. in the Form aforesaid.

And the aforesaid A. B. saith, that the aforesaid C. by Reason of the Allegations aforesaid, cannot justly avow the Taking of the Cattle aforesaid in the aforesaid Place wherein, &c. because he saith, that the aforesaid fifteen Pounds of the Rent aforesaid at the Time wherein, &c. was not in Arrear or unpaid to the aforesaid C. nor any Part thereof at the Time wherein, &c. as the said C. hath in his Avowry aforesaid above alledged was in Arrear to the aforesaid C. And prays that this may be inquired of by the Country; And the aforesaid C. likewise: *Plea in Bar that no Rent is in Arrear.* Therefore the Sheriff of S. is commanded, that he cause to come here in fifteen Days from the Day of St. Martin, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

A Replevin is grounded on a Distress, and Replevin, is a Remedy provided that the Thing may remain with the first Possessor, upon his Security.

King's
Bench.

rity given till the Right of distraining be made to appear, and the Party suing it gives Security to pursue the Action and return the Goods, Cattle, &c. again, if the Taking be adjudged lawful.

By Statute 2 *W. & M.* where Goods are distrained for Rent, and the Tenant shall not in five Days after Notice replevy the same, the Person distraining with the Sheriff, Constable, &c. may cause them to be appraised and sold to satisfy the Rent.

And by 8 *Anne*, where Goods are fraudulently conveyed from an Estate, they might be taken in Distress in five Days wheresoever found. And now by 11 *Geo. 2.* in 30 Days.

Note; A Distress may be taken for Part of the Rent where the Goods are not sufficient to satisfy it, and an Action of Debt for the Remainder, whereby both the Goods and Person are made liable.

A Declaration in Ejectment.

Michaelmas Term 14 Geo. 2.

*To serve this
Declaration in
Ejectment on
a Tenant of a
Lord of Par-
liament, or
Members of
the House of
Commons du-
ring the Pri-
vilege, is
Breach thereo-
f.*

Somerset, to wit, **A.** *B.* complains of *C. D.* in the Custody of the Marshal, &c. for that, to wit, that **whereas** *E. F.* Gentleman, on the tenth Day of October in the — Year of the Reign of the Lord George, now King of Great Britain, &c. at *W.* in the County aforesaid, had demised, granted, and to Farm let to the aforesaid *A.* five Messuages and five Gardens, (*reciting the Parcels*)

Parcels) with the Appurtenances, situate, lying and being in the Parish of (*the Place where the Premises lie*) in the County aforesaid, to have and to hold the Tenements aforesaid with the Appurtenances, to the aforesaid *A.* and his Assigns, from the eighth Day of *October* then last past unto the full End and Term of five Years from thence next ensuing, and fully to be compleat and ended; By Virtue of which said Demise the same *A.* entered into the Tenements aforesaid with the Appurtenances, and was thereof possessed, until the aforesaid *C.* afterwards, *to wit*, the same tenth Day of *October* in the ——— Year aforesaid, with Force and Arms, &c. entered into the Tenements aforesaid with the Appurtenances, in and upon the Possession of the said *A.* and the said *A.* from his Farm aforesaid, (his Term aforesaid therein being not yet expired,) ejected, expelled and amoved; And him the aforesaid *A.* being so thereof ejected, expelled and amoved, hath kept out thereof, and still doth keep him out of his Possession, and other Enormities hath then and there done to him, against the Peace of the said Lord the now King, and to the Damage of the said *A.* of ten Pounds; And therefore he brings Suit, &c.

B. for the Plaintiff,
S. for the Defendant.

} *Pledges, &c.*

Mr. G. H.

I Am informed that you are in Possession, or claim Title to the Premises in this Declaration of Ejectment mentioned, or to some

T 4

Part

King's
Bench.

* *If the Declaration be in London or Middlesex, then say, the first Day of next Hillary Term.*

Part thereof, and I being sued in this Action as casual Ejector, and having no Claim or Title to the same, do advise you to * appear next *Hillary Term* in his Majesty's Court of *King's Bench* at *Westminster*, by some Attorney of that Court, and then and there by Rule made of the same Court, to cause yourself to be made Defendant in my Stead; otherwise I shall suffer Judgment therein to be entered against me, and you will be turned out of Possession.

I am Yours,

January 5th, 1740.

C. D.

Note; The Defendant is not arrested on these Ejectments, but they being usually to try a Title, the first Defendant is some Friend to the Plaintiff, and at the Bottom of this Declaration or Backside, in his Name, this Notice is given to the Tenant in Possession to defend his Title.

To whom Declaration in Ejectment must be delivered.

A Copy of this Declaration, with the Subscription or Notice, must be delivered before the Effoin-day of the ensuing Term to the Tenant in Possession himself, or to his Wife; (a Delivery to a Son, Daughter or Servant, is not good, unless it appear by Affidavit to the Court, that the Tenant acknowledged the Receipt of such Declaration,) the Person that delivers it must read the Subscription or Notice to the Tenant, or may tell him the Contents thereof, and that unless he forthwith shall

shall procure some Attorney of the *King's Bench* to appear for him and defend his Title, *Bench*. (if he hath any,) he shall be turned out of Possession.

Sometime in the ensuing Term you give a Rule to plead with the Clerk of the Rules; and if the Tenant does not appear and enter into the Rule by Consent, which is hereafter set forth, you must first, in order to intitle yourself to have Judgment against the casual Ejector, make the following Affidavit of the Service of the Declaration in Ejectment.

The Affidavit.

A. B. maketh Oath, that he did on the — Day of — deliver a Copy of the Declaration hereunto annexed unto *G. H.* Tenant in Possession of Part of the Premises in the said Declaration mentioned; And also on the same Day did deliver one other Copy of the said Declaration unto *D.* the Wife of *E. F.* one other Tenant in Possession of the other Part of the Premises in the said Declaration mentioned. And this Deponent further saith, he told them severally, that it was a Declaration in Ejectment, and unless they did appear by some Attorney of the Court of *King's Bench* this present *Hilary* Term, there would be Judgment thereupon against the Defendant by Default, and they would be turned out of Possession, or Words to that Effect.

Sworn the — Day
of — Before me.

A. B.

Upon

King's
Bench.

* If in Lon-
don or Mid-
dlesex, you
may move the
Court the Be-
ginning of the
Term, because
the Tenant has
but a few
Days in Term
to appear and
plead.

Upon this Affidavit * at the latter End of the Term you move the Court, that unless the Tenant in Possession will enter into such Rule, Judgment may be entered against the casual Ejector; the Clerk of the Rules upon this Motion keeps the Affidavit and Declaration annexed, so that it is proper you have another filled up by you.

You draw up a Rule with the Clerk of the Rules for Judgment against the casual Ejector, and unless the Tenant within the Time given by that Rule, does not appear and enter into the Rule by Consent, Judgment may be entered against the casual Ejector by Default, and then a Writ of Possession issues out, as you may observe before in the Judgment entered in Ejectment, amongst the Judgments. See the Writ amongst the Executions.

But if the Tenant will appear and enter into the Rule by Consent, it is proper his Attorney should first take the following Authority.

*The Warrant to the Tenant's Attorney
to appear and plead.*

Mr. K.

Apppear for me to this Declaration, and make me Defendant in the Room of C. D. the Nominee Defendant, and enter into the common Rule for confessing the Lease, Entry and Ouster, and thereupon plead Not guilty; and for your so doing this shall be your Warrant, and I hereby promise to pay you your Fees and Disbursements. G. H.

Then the Tenant's Name must be inserted in the following Rule, and he is made Defendant in the Declaration in the Room of the other Defendant, and must Plead Not guilty, and insist upon his Title only at the Trial, &c. otherwise Judgment may be entered by Default.

The Rule by Assent is thus:

Hillary in the fifth Year of King George.

Somerset, ss. **I**T is ordered on the Assent of the Attornies of both Sides, that *G. H.* may be made Defendant in the Place of the now Defendant *C. D.* and forthwith appear, at the Suit of the Plaintiff, and put in Common Bail, and receive a Declaration in a Plea of Trespass and Ejectment for the Tenements in Question, and shall plead thereto Not guilty without Delay, and upon Trial of the Issue shall confess Lease, Entry and Outster, and insist upon his Title only, otherwise Judgment shall be entred for the Plaintiff against the now Defendant *C. D.* by Default; and if upon Trial of the Issue aforesaid, the said *G.* do not confess, Lease, Entry and Outster, by which the Plaintiff cannot further prosecute his Bill against the Defendant, then no Costs or Charge upon such *Non-pross* shall be adjudged: But the aforesaid *G.* shall pay to the aforesaid Plaintiff, the Costs and Charges to be thereupon Taxed. **And it is further Ordered,** that if upon Trial of the Issue aforesaid, a Verdict shall be given for the Defendant

A. B. against C. D. for ten Messuages, &c. (naming the Parcels) in G. in the County of S. of the Demise of E. T. The Court will not compel the Defendant to enter into a Rule for more Lands or Tenements in the Declaration mentioned than are in his Possession.

te; If the Plaintiff suffer a *Non Process* King's
 Affizes because the Defendant did not Bench.
 is, &c. It is said you need not stamp
 record for Postea or Judgment, but only
 the Record from the Affizes, and Judg-
 will be signed upon the Rule by con-

this Title of Ejectment, it may be useful
 mak something concerning Proceedings by
 nal.

Proceedings by Original.

d Note, That Proceedings by Original
 not so often used in this Court, the At-
 s not being so well versed in that Me-
 as also it is more subject and liable to Er-
 However in some Cases, as in Ejectment,
 ra&ice is very necessary to be understood;
 seeing I do not find it set forth in any
 that treat of this Subject, I think it may
 useful to insert it; the Method is much af-
 e Manner of the Court of *Common Pleas*,
 ne Advantage is that a Writ of Error up-
 Judgment in Ejectment by original cannot
 ought, or at least returnable, but when the
 ment is sitting, which is of great use for
 eedy getting into Possession; as you ought
 ve a *Latitat* to warrant your Ejectment
 ht in the usual manner by Bill in the
 ry; so in this Way of Proceeding you
 to have an Original, which is the Foun-
 of the Action.

Draw

Note ; If the Plaintiff suffer a *Non Process* King's at the Assizes because the Defendant did not Bench. confess, &c. It is said you need not stamp the Record for Postea or Judgment, but only shew the Record from the Assizes, and Judgment will be signed upon the Rule by consent.

In this Title of Ejectment, it may be useful to speak something concerning Proceedings by Original.

Proceedings by Original.

And Note, That Proceedings by Original are not so often used in this Court, the Attornies not being so well versed in that Method, as also it is more subject and liable to Errors. However in some Cases, as in Ejectment, that Practice is very necessary to be understood ; and seeing I do not find it set forth in any Books that treat of this Subject, I think it may be useful to insert it ; the Method is much after the Manner of the Court of *Common Pleas*, and the Advantage is that a Writ of Error upon a Judgment in Ejectment by original cannot be brought, or at least returnable, but when the Parliament is sitting, which is of great use for the speedy getting into Possession ; as you ought to have a *Latitat* to warrant your Ejectment brought in the usual manner by Bill in the Country ; so in this Way of Proceeding you ought to have an Original, which is the Foundation of the Action.

Draw

King's
Bench.

Draw a *Præcipe*, which is the Instruction to the Curfitor of the County where the Land lieth, or make the Original in this manner.

Pone for an
Original in
Ejectionment.

Somerset, to wit, (The County where the Land lieth,) If A. B. (to wit, the Plaintiff) make, &c. then put, &c. T. D. (to wit, the Defendant,) late of F. in the County aforesaid, Yeoman, (Note; you must put the Defendant's Addition, or else it is Error.) to answer to the aforesaid A. B. of a Plea, wherefore with Force and Arms he entred into one Messuage, one Hundred Acres of Land, Fifty Acres of Meadow, and Fifty Acres of Pasture, with the Appurtenances in G. (to wit, the Parish where the Land lieth, and the House and Land as you lay them in the Declaration,) which S. (to wit, the Lessor of the Plaintiff, that is the Person that hath the Title in him,) hath demised to the aforesaid A. B. for a Term which is not yet expired, and ejected him from his said Farm, and other Enormities, &c. to the great Damage, &c. and against the Peace, &c. returnable in eight Days of St. Hillary, wherefore, &c. in the King's Bench.

Carry this *Præcipe* or Instruction to the Curfitor of the County where the Land lieth, at the Curfitors Office in *Chancery-Lane*, for which you pay him Two Shillings and Sixpence; the Original must be returnable on a general Return Day, as *On the Octave of St. Hillary*, and may be the first Return of the Term whereof your Declaration is, that is, if you have Judgment against the casual Ejector, for that the Tenant doth not enter into a Rule, and Plead, then

then your Original must be against the casual Ejector; but if the Tenant appear and plead, then your Original must be made against the Tenant, and not against the casual Ejector; which Original you must get returned by the Sheriff to whom it is directed, although the Practice is usually for the Plaintiff's Attorney to return the Original, and after it is returned it ought to be filed with the *Custos Brevium* of the King's Bench.

The Form of a Declaration in Ejectment by Original.

Michaelmas the 14th of King George the 2d.

South'ton, to wit, **C**Harles Draper, (the Defendant,) late of Peters-
field in the County of Southampton, Yeoman, was attached to answer to *A. B. (the Plaintiff)* of a Plea, wherefore with Force and Arms, &c. he entered into one Messuage, one Orchard, one Barn, Fifty Acres of Land, Fifty Acres of Meadow, Fifty Acres of Pasture, with the Appurtenances in *E. (the Parish where the Land lieth)* in the County aforesaid, which *J. S. (the Person that hath the Title in him)* demised to the said *A. B.* for a Term which hath not yet expired, and ejected him from his said Farm, and other Enormities to him did, to the great Damage of the said *A. B.* and against the Peace of the Lord the now King, &c. And whereupon
Amending Declaration.
The Court will not permit the Plaintiff in Ejectment to amend his Declarations tho' before pleaded, but he must stand or fall by it, or deliver a new Declaration; neither will the Court give Costs where it appears that there was only one Declaration delivered,
and no Proceedings thereon; but when several Declarations have been delivered, and no Proceedings on neither, there they give Costs for the Vexatiousness of such Proceedings.

the

King's
Bench.

the said *A. B.* by *J. P.* his Attorney complaining, that **whereas** the aforesaid *J. S.* the tenth Day of *October* in the — Year of the Reign of the said Lord the now King, at *E.* aforesaid, (*the same Parish where the Land lieth,*) had demised to the said *A.* the Tenements aforesaid, with the Appurtenances; To have and to hold the said Tenements, with the Appurtenances to the said *A. B.* and his Assigns, from the ninth Day of *October* then last past unto the full End and Term of five Years from thence next following, fully to be compleat and ended; by Virtue of which said Demise the said *A. B.* entered into the Tenements aforesaid with the Appurtenances, and was thereof possessed. And the said *A. B.* being so thereof possessed, the aforesaid *C. D.* (*to wit, the Defendant,*) afterwards, to wit, the same tenth Day of *October* in the — Year aforesaid, with Force and Arms, &c. entred into the Tenements aforesaid, with the Appurtenances, which the aforesaid *J. S.* (*to wit, the Lessor,*) demised to the said *A. B.* in Form aforesaid, for the Term aforesaid, which is not yet expired, and ejected him the said *A. B.* from his Farm aforesaid, and other Enormities, &c. to the great Damage, &c. and against the Peace, &c. Wherefore he says that he is injured, and has Damage to the Value of ten Pounds; And thereof he brings his Suit, &c.

No Pledges
when by Original.

The Rule by
Consent on an
Original is the
same as the
foregoing Rule,
only you leave out
insert (his Writ.)

Then write Notice to the Tenant or Tenants in Possession, as in the former Instructions in Ejectment, and serve it before the Es-

(and put in common Bail,) and instead of (his Bill)

insert (his Writ.)

foin-Day of the ensuing Term—Make your ^{King's} Affidavit of Service of the Declaration, (*for Bench* which see before) and move for Judgment against the casual Ejector, and draw up the Rule if the Tenant do not appear, and leave a Rule at the Judge's Chamber.

And if the Rule be left, then take it from the Judge's Chamber, and enter it with the Clerk of the Rules as before, and write your Declaration a new, * Copywise for your Issue, * *It is now al-* which must be of the same Term, (*to wit, of ways written* Hillary) your first Declaration being of *Mi-* *close.* *chaelmas*, and then instead of *C. D.* the casual Ejector, your first Defendant, put in the Name of the new Defendant mentioned in the Rule, left in the Judge's Chamber, and his Addition; for that is necessary in this Action, and so alter the Declaration as to the Defendant's Name, and leave out the Notice to the Tenant, as in the former Instructions, and the Defendant's Attorney must Plead *Not Guilty*.

Note; You should write the Declaration † Copywise, and make the Defendant's Attorney † *No need of* a Copy thereof, for which he now pays Four- *being Copywise.* pence a Sheet, then draw up your Issue; but you must not begin *Be it remembered* that, &c. but leave out all the *Memorandums*, and begin as the Declaration begins, and then the Impar lance as follows.

And the aforesaid *C. D.* (*the new Defendant*) *Impar lance.* by *J. C.* his Attorney comes and defends the Force and Injury when, (&c.) and saith that he is not Guilty of the Trespass and Ejectment *Plea.* aforesaid, in Manner and Form as the aforesaid *A. B.* (*the Plaintiff*) above complains against
U him;

King's
Bench.

him; and of this he puts himself upon the Country; and the aforesaid *A. B.* likewise, &c. **Therefore** the Sheriff is commanded, that he cause to come before the Lord the King, On the Octave of the *Purification of the Blessed Mary (the last Return of the same Term)* where-soever the said Lord the King shall then be in *England*, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid, &c.

Deliver a Copy of this Issue to the Defendant's Attorney, for which he must also pay you Fourpence a Sheet, and for entring Plea and Warrant of Attorney, two Shillings and Eightpence; he should also pay for entring the Rule two Shillings, it being his Rule, not the Plaintiff's; and give him Notice of Trial as before.

Returnable
wheresoever.

Here note, That your *Venire*, which is mentioned at the End of the Imparlance, must be returnable on a general Return-Day, as *On the Octave of the Purification of the Blessed Mary*, as in the *Common Pleas*, and it must be also *wheresoever we shall then be in England*, in which it differs from the *Common Pleas*; and the true Reason of this Difference is, because in antient Times, the Court of *King's Bench* was not fixed or held in any particular certain Place, as now it is, but followed the King's Court, and was held where-ever the King was; and also you must observe, that all your other Writs in this Way of Proceeding, as well the *Distringas* before the Trial, as the Writ of Possession and other Executory Writs after the Trial,

Trial, must also be returnable on a general King's Return-Day, *wheresoever we shall then be in* Bench. England, and the *Jurata* of the Record of *Nisi prius* must be as after mentioned.

Having made your *Venire* returnable on a general Return-Day, *wheresoever we shall then be in* England, you must get it returned by the Under-Sheriff, and then make out your *Distingas* as in the former Proceedings, only it must be returnable on a general Return-Day, as *In fifteen Days from the Day of Easter, wheresoever we shall then be in* England, (to wit,) the first Return of the ensuing Term.

Then make up your Record, of which the *1st Placita* first *Placita* must be exactly as in the other Way, only you must leave out the *Memo-randum*, and begin with the Declaration as you did in the Issue.

After you have ingrossed the Declaration and Plea, and the second *Placita* is inserted, you come to the *Jurat*, which must be, *The Jurat* *Jurat*. *Jury between A. B. by his Attorney, Plaintiff, and C. D. (Addition, as in the Declaration) of a Plea of Trespass and Ejectment is respited before the Lord the King, wheresoever the said Lord the King shall then be in* England, until fifteen Days from the Day of Easter, (to wit, the Return of the *Distingas*,) and the rest as in the other *Jurat*.

You seal the Record at the same Office in *Seal*. *Gray's Inn*, and pay the same Fees, then draw your *Breviat*, in which you make a short Recital of the Declaration, and add the Plea, and that the Defendant is to confess Lease, Entry and Ouster, by Rule of Court, &c.

King's
Bench.
Breviat.

Plaintiff's
Title.

Many unexperienced Attornies are much defective in their *Breviat*; the most approved Way is, first write in the Margin, or in the Middle, the Plaintiff's Title, then begin with the Person that was seised in Fee of the Premises in Question, and under whom the Lessor of the Plaintiff your Client claims, and deduce the Title carefully and orderly from such Persons so seised to your Client, setting forth the Dates and Contents of the Conveyances, and observe how they are executed, whether by Livery of Seisin, or by Inrolment, or by Lease and Release, or by Fine and Deed of Uses, or if your Client be in by Purchase; and take particular Care how to prove the Deed as the Law requires; the Chirograph of a Fine proves it self, and so doth a Deed inrolled according to the Statute, and so doth every ancient Deed, where Possession hath gone accordingly.

Deeds proved.

Witnesses.

If all the Witnesses to a later Deed are dead, you must endeavour to prove they are dead, and that their Names set as Witnesses to the Deed are of their Hand-writing, and to prove the Grantor's Hand; and sometimes it is necessary, if it be not an old Title, to prove the Person seised and in Possession under whom you Claim.

Will.

If you claim by Will, which is not proved in Chancery, a Copy of the Will out of the Spiritual Court is no Evidence, for that Purpose, but you must have the Will itself out of the Office, which the Proctors there will put you in a Way to obtain upon Security; and if the Will be proved in Chancery, you must have a Copy of the Bill, Answer and Depositions

sitions, and prove them true Copies examined with the Records; but if the Witnesses to such Will are living, they must prove the same *Viva voce*, or else make proper Affidavits, that they are in an ill State of Health, &c. to induce the Court to read such Depositions.

If your Client be in by Discent, prove the Ancestor seised in Fee under whom you claim, and set forth and prove your Pedigree, and likewise draw it in the Form of a Pedigree in the Margin of your Declaration, that your Counsel may apprehend it without Perplexity.

If the Estate be Copyhold, you must prove it Part of such a Manor, and you must prove the Admissions to be true Copies of the Court-Roll. When you have set forth your Client's Title and your Proofs, it is a good Way also to set forth the Defendant's Title, or pretended Title, so far as you can come to the Knowledge of it, that your Counsel may be in some Measure informed and prepared for it; All Titles cannot be tried by Ejectment, for where the Entry is taken away an Ejectment lieth not, as by *Disseisins* and *Discents*, Fines and Recoveries, and Non-claims and Limitations, which are not here to be treated of; and therefore if your Client claim by a stale Title, as above twenty-one Years standing, and be not helped by Non-age, *Oustre le Mere*, Imprisonment, Coverture, &c. you will be in Danger to fail in your Action; and the like in Cases of Fines and Non-claims; so that it is safest to have the Advice of Counsel before Trial, if the Question be any Thing intricate.

King's
Bench.

*Plaintiff
non-suited.*

And also observe, that if the Lessor of the Plaintiff doth not prove a good and absolute Title in himself, he will be nonsuited, tho' the Defendant have no Title at all, for the Defendant's Possession will secure him.

And also, if he can make appear, that a third Person not concerned in that Action hath Title in him, that shall nonsuit the Plaintiff.

Another Thing to be observed is, that the Plaintiff is sometimes nonsuited through Inadvertency; as for Instance,

Mortgage.

If the Mortgagor make a Lease of the Premises for seven Years at an improved Rent, and sometimes after mortgages the Lands for Payment of a Sum of Money with Interest at the Expiration of a Year or two; the Money not being paid, the Mortgagee brings his Ejectment against the Tenant to recover the Possession, to which the Tenant appears, and makes himself Defendant, and at the Trial produces and proves the Lease, which being prior to the Mortgage, and not expired, the Plaintiff will be nonsuited, though he hath a good Title, and by Virtue whereof he might have compelled the Tenant to attorn, if a right Method had been used.

These few Observations, as is said before, are intended for young Beginners and unexperienc'd Practisers, and even sometimes the more able happen to be surprized by such Accidents.

Postea.

Writ of Possession.

After your Trial call for your Record with the *Postea* indorsed, and your *Distingas*, and give a Rule on the *Postea*, and tax the Costs, and enter your Judgment, and take out your

your Writ of Possession, as in the former Di- King's
rections, only you must make your Writ re- Bench.
turnable on a general Return-Day *wherefo-*
ever we shall then be in England, as aforesaid,
and say, *Whereas, &c. by our Writ,* and not
by Bill, (and pay the Fine on the *Capiatur*
to the Secondary's Clerk, before the Sec-
ondary will tax Costs, and so you must, if you
proceed in the usual Manner upon the *Lati-*
tat, upon Action of Trespass.)

But if this Action be in *London* or *Mid-*
dlesex, you take the Record and *Distingas*
from the *Sociate* immediately after the Trial is
over, and indorse the *Postea* on the Record
your self.

See Instructions for entering up Judgments
in other Actions.

It is generally held, that if there be a *Writ of Error.*
Parliament in Being, as by Adjournment or
Prorogation, though not actually sitting, yet
a Writ of Error returnable in Parliament-time
may be sued out, and that the shewing the
same to the Plaintiff's Attorney is a *Super-*
sedeas.

Others think it ought to be allowed before
it can have the Effect of a *Supersedeas.*

But that Honourable Court is of so high a
Nature, that great Care must be taken to pay
due Respect and Obedience to any Process
there returnable.

Proceedings against Prisoners.

Of delivering Declarations to Prisoners.

FOrmerly when the Defendant was committed to Gaol for want of Bail, unless the Plaintiff before the End of the two Terms next after the Arrest did cause the Defendant to be removed by *Habeas Corpus* to be charged in Court, the Prisoner upon common Bail or Appearance of Attorney was discharged from Imprisonment to the Plaintiff's Prejudice; therefore by the Statute 4 & 5 *W. & M. cap. 21.* it is enacted, that where the Defendant is taken or charged in Custody upon any Writ out of the Courts at *Westminster*, and imprisoned for Want of Sureties for his Appearance, the Plaintiff, before the End of the next Term after such Writ shall be returnable, may declare against such Prisoner in the Court out of which the Writ issued, whereupon such Prisoner shall be taken or charged in Custody, and may cause a true Copy thereof to be delivered unto such Prisoner, or to the Gaoler or Keeper of the Prison, or Gaoler in whose Custody such Prisoner shall be and remain, to which Declaration the said Prisoner shall appear and plead; but if he shall not appear and plead thereto, the Plaintiff in such Case shall have Judgment, as if the Prisoner had appeared and

and refused to plead: That in all such De-
 clarations against such Prisoners, it shall be
 alledged in the Custody of what Sheriff, Bai-
 liff or Steward of any Franchise, or other
 Person having Return and Execution of Writs,
 such Prisoner shall be at the Time of such De-
 claration; which Allegation shall be as good
 and effectual, as if such Prisoner was in the
 Custody of the Marshal of the *Marshalsea*.

*The Judges of the Court of King's Bench
 have on this Act made the following Rule for
 delivering Declarations to Prisoners.*

*First, That no Copy of a Declaration be
 delivered to a Prisoner in Custody before the
 Day of the Return of the Process upon which
 the Defendant was taken or charged in Cu-
 stody.*

*Secondly, That no Rule be given for the
 Defendant in Custody to appear and plead to
 any Declaration against him, till an * Affidavit * See after the
 be filed with the Clerk of the Rules of the Form of an
 Delivery of a Copy of such Declaration, and Affidavit.
 the Time when, and the Person to whom the
 said Copy was delivered; and that the De-
 fendant was arrested or charged in Custody
 by Process of this Court, returnable before
 the Delivery of such Copy, and that the
 Time when such Affidavit was filed be en- See after the
 tred upon the said Affidavit by the Clerk of Manner of
 the Rules, and a Copy of Affidavit be pro- doing this.
 duced to the Prothonotary or Secondary before
 Signing of Judgment.*

*Thirdly, If a Copy of the Declaration be
 delivered against such Defendant before one
 Month of Easter, or the Morrow of All-Souls,
 and*

Proceedings against Prisoners.

and Affidavit thereof made and filed, and the Defendant doth not appear before the End of *ten Days after Easter and Michaelmas Term respectively*, Judgment may be entred against him, if Rules have been given. But if he doth appear before the End of *ten Days after the Term*, he shall imparl until the next Term, (unless the Action be in *London or Middlesex*, and the Defendant be in Prison within forty Miles of *London or Westminster*;) then, though he doth appear before the Expiration of *ten Days after the End of the Term*, he shall plead two Days before the Essoin-Day of the next Term, and in Default thereof (Rules having been given) Judgment may be entered against him as aforesaid.

Fourthly, If a Copy of the Declaration be delivered against such Defendant, on or after *one Month of Easter*, in *Easter Term*, or the *Morrow of All-Souls in Michaelmas Term*, or in *Hillary or Trinity Term*, and thereupon the Plaintiff give Rule to appear and answer; then must the Defendant appear two Days before the Essoin-Day of the next Term; but if he does not appear within that Time, Judgment shall be given against him.

Fifthly, If a Writ be returnable in any Term, and a Copy of the Declaration has been delivered before the Essoin-Day of the next Term, the Plaintiff in such next Term may give Rules to appear and answer; and if the Defendant does not appear and plead upon the Expiration of the Rules, Judgment shall be given against him.

Sixthly, If the Declaration be not filed before the End of the next Term after the Writ

or Process (by which the Prisoner was taken King's or charged in Custody) is returnable, and Affidavit made and filed in Manner as aforesaid, before the End of *twenty Days* next after such Term, the Prisoner shall be discharged by common Bail signed by one of the Justices of this Court.

Seventhly, If any Gaoler or Keeper of a Prison, having received a Copy of a Declaration against any Prisoner in his Custody, shall suppress the same, and not deliver it forthwith to the Prisoner, an Attachment shall be issued against him.

John Holt, } *William Gregory,*
William Dolben, } *Giles Eyre.*

Before you deliver the Declaration to the Gaoler or Keeper, you must ingross it on Parchment with double *1 d.* Stamp, and file it with the Clerk of the Declarations, then deliver a Copy on Paper with double *1 d.* Stamp to the Gaoler or Keeper, asking at the same Time, if the Defendant is a Prisoner or not, or you may deliver it to the Defendant himself in Custody; having done this, you make another Copy of the Declaration on double *1 d.* which must be annexed to the following Affidavit, before you can give a Rule for the Defendant to appear and plead.

A. *B. of, &c.* maketh Oath, That he this *Affidavit of*
 Deponent did on the second Day of *the Delivery of*
May last deliver unto the Keeper or Gaoler *a Declaration*
 of the Gaol-Prison of the County of *Berks* *against a Pri-*
 true Copy of the Declaration hereunto an-
 nexed,

Proceedings against Prisoners:

nexed, and the said Gaoler or Keeper then confessed unto this Deponent, that the said Defendant was a Prisoner in the said Prison, and that he would deliver the Declaration to him; and this Deponent saith, That the said Defendant was arrested or charged at this Deponent's Suit, by Virtue of a *Latitat* issuing out of this Court returnable before the Delivery of the said Declaration.

A. B.

*Sworn the — Day of —
in the Year of our Lord
— before me.*

After you have sworn this Affidavit with the Declaration annexed, you may make a Copy of the Affidavit on double 6 *d.* Stamp, and another Copy of the Declaration on double 1 *d.* Stamp, and annex them together, then carry both Affidavits and Declarations to the Clerk of the Rules, who will keep the original Affidavit and Declaration annexed, and will write on the Bottom of the Copy of the Affidavit — *Examined with the Affidavit affiled the — Day of — in the — Year of King George the Second.*

Then go to the Master of the King's Bench Office with this Affidavit and Declaration, and he will give you a Rule on the Affidavit, for Time for the Defendant to appear and plead; then you go back to the Clerk of the Rules, and he enters in his Paper the Rule given by the Master, and marks under the Rule on the Affidavit, *Entered.* And if the Defendant does not appear and plead, according to the Time given by the Rule, (a Plea being

Proceedings against Prisoners.

301

being demanded), you sign your Judgment against the Defendant. King's Bench.

Note ; You need not make any Affidavit of the Delivery of a Declaration against a Prisoner in Custody of the Marshal of the King's Bench, but you give a Rule to plead of Course with the Clerk of the Rules, and the Defendant is obliged to plead when the Rule is out, which is in about eight Days, otherwise a Plea being demanded you take your Judgment against him.

Note ; If you charge a Prisoner in Custody of the Marshal in Vacation-time, you must go to the Marshal's Book, and make an Entry, *That he may remain in Custody at the Suit of J. S.* as you will see several Forms in that Book, and the ensuing Term you declare against him in Custody.

Having obtained your Judgment against the Defendant, you apply to the Clerk of the Rules for a Rule in order to charge the Defendant in Execution, and he without Motion will draw you up such a Rule accordingly, for which you pay him 4 s. Make a Copy of the Rule, and serve the same on the Marshal, who will on your paying him 10 s. 6 d. write on the Bottom of the Rule his Acknowledgment of the Defendant's being in his Custody, then enter a *Committitur* in the Marshal's Book with Mr. Lantrow, for which you pay him 2 d. in this Manner: *The Manner of charging the Deft. in Execution in Custody of the Marshal.*

London, to wit, **C.** D. otherwise called, &c. Feb. 1. 1731.
is committed to the
Custody of the Marshal of the *Marshalsea* in
Execution

King's
Bench.

* *If in Case*
say, for 50 l.
in a Plea of
Trespass on
the Case, and
there, &c.

Execution at the Suit of *A. B.* for 50 *l.* *
Debt, and 53 *l.* for Costs, and there to re-
main until, &c.

G. F. Attorney.

Then make out a *Committitur* on Parchment in the same Manner as above, leaving out the Date in the Margin, and adding the Term and Number-Roll of the Judgment, you file this *Committitur* with Mr. *Hawley*, the Signer of the *Latitats*, for which you pay him 2 *s.* and he will deliver the *Committitur* to Mr. *Lantrow*, who will enter it upon the same Roll your Judgment is of, after this Manner:

Afterwards, to wit, the aforesaid *Wednesday* next after fifteen Days of the *Holy Trinity* in this same Term before the Lord the King at *Westminster*, the aforesaid *A. B.* came in his proper Person, and the aforesaid *C.* then present here in Court, on the Petition of the aforesaid *A.* is committed to the Custody of the Marshal, &c. in Execution for the Debt and Damages aforesaid, there to remain until, &c.

Of Demurrers.

A General Demurrer in Abatement to a Declaration.

AND now at this Day, to wit, on *Wednesday* next, after three Weeks of *St. Michael*, this same Term, until which Day the aforesaid C. had Leave to imparle to the Bill aforesaid, and then to answer, &c. before the Lord the King at *Westminster* comes as well the aforesaid A. by his Attorney aforesaid, as the aforesaid C. by J. S. his Attorney; and the same C. defends the Force and Injury, when, &c. And prays Judgment of the Declaration aforesaid, because he saith, That the Declaration aforesaid, and the Matter therein contained, are not sufficient in Law for him the said A. to have or maintain his said Action against the said C. to which the same C. hath no need, nor is he any ways bound, by the Law of the Land to answer: And this he is ready to verify: Wherefore for want of a sufficient Declaration in this Behalf, the said C. prays Judgment of that Declaration, and that the same (Declaration) may be quashed, &c. And the said C. according to the Statute, &c. shews the Causes of Demurrer following, to wit, That it does not appear, nor is it alledged in the said Declaration, whether the said J. K. died intestate, or not, nor is it alledged in the said Declaration as it ought to be, that Administration of the Goods and Chattels, which were of the said J. K. at the Time of his Death,

Demurrers.

Death, was committed to the said *A.* And also that the said Declaration is uncertain, insufficient, and wants Form.

Vide post. For the Manner of shewing the Causes of Demurrer.

Note ; If it be in Abatement of the Bill, put the Word *Bill* in the Room of the Word *Declaration*.

A Joinder in Demurrer in Abatement.

And the aforesaid *A.* saith, That for any Thing before alledged (by the said *C.*) the said Declaration of him the said *A.* ought not to be quashed, because he saith, That the Declaration aforesaid, and the Matter therein contained, are good and sufficient in Law, for him the said *A.* to maintain his aforesaid Action against the said *C.* which said Declaration, and the Matter therein contained, the said *A.* is ready to verify and prove, as the Court, &c. And because the aforesaid *C.* hath not answered to that Declaration, nor hath hitherto any wise denied the same, the said *A.* prays * Judgment, and his Damages by Occasion of the Premisses, to be adjudged to him, &c.

Or thus in Debt.

* ——— Prays Judgment and his Debt aforesaid, together with his Damages by Occasion of the detaining that Debt, to be adjudged to him, &c.

In Trespass.

—— Prays Judgment, and his Damages by Occasion of the Trespass aforesaid, to be adjudged to him, &c.

In Assault.

—— Prays Judgment, and his Damages by Occasion of the Trespass and Assault aforesaid, to be adjudged to him, &c.

A Demurrer in Bar to a Declaration.

And the said J. S. by H. G. his Attorney comes and defends the Force and Injury, when, &c. and says, That the said T. ought not to have or maintain his said Action against him, because he saith that the said Declaration, and the Matter therein contained, &c. (*as in the former Demurrer to*) Wherefore, for want of a sufficient Declaration in this Behalf, he the said J. prays Judgment, and that the said T. may be barred (precluded) from having his said Action against him, &c. And the said J. S. according to the Statute, &c. shews the Causes of Demurrer following, (to wit) That ——— And that —

Demurrers.

A Joinder in Demurrer in Bar.

AND the said *T.* saith that for any Thing before alledged by the said *J.* he the said *T.* ought not to be barred (precluded) from having or maintaining his said Action against the said *J.* because he saith that the said Declaration, and the Matter therein contained, &c. as in the former Joinder.

A Demurrer to a Plea in Bar.

AND the aforesaid *A.* saith that by any Thing by the said *C.* in Manner and Form aforesaid above in Pleading alledged, he the said *A.* ought not to be precluded from having his said Action thereon against him, because he saith, that the said Plea, and the Matter in the same contained are not sufficient in Law to preclude him the said *A.* from having his said Action against the said *C.* To which said Plea the said *A.* is under no Necessity, nor is he in any wise bound by the Law of this Land to answer: And this he is ready to verify: Wherefore for want of a sufficient Plea in this Behalf, the said *A.* prays Judgment, and his Damages occasioned by the Premisses, to be adjudged to him, &c.

In Trespass.

—— Prays Judgment, and his Damages by Occasion of the Trespass aforesaid, to be adjudged to him, &c.

—— By Occasion of the Trespass and Assault *Assault*, aforesaid, &c.

In Debt.

—— Prays Judgment, and his Debt aforesaid, together with his Damages by Occasion of the detaining of that Debt, to be adjudged to him, &c.

In Covenant.

—— On Occasion of the Breach of the Covenants aforesaid.

Joinder in Demurrer to a Plea in Bar.

And the aforesaid C. saith, That the Plea aforesaid, by him the said C. in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in the Law to preclude the said A. from having his Action aforesaid thereof against the said C. which said Plea, and the Matter in the same contained, he the said C. is ready to verify and prove, as the Court, &c. And because

Demurrers.

the aforesaid *A.* hath not answered to the said Plea, nor hath hitherto in any wise denied the same, the said *C.* as before prays Judgment, and that the aforesaid *A.* may be precluded from having his Action aforesaid thereof against him the said *C.*

Demurrer by the Defendant to the Plaintiff's Replication.

And the aforesaid *D.* saith, That the Plea aforesaid, by him the said *G.* in Manner and Form aforesaid above in his Replication pleaded, and the Matter in the same contained, are in no wise sufficient in Law, for the said *G.* to have or maintain his Action aforesaid thereupon, against him the said *D.* to which the same *D.* hath no Necessity, nor by the Law of the Land is obliged, in any manner to answer: And this he is ready to verify: Wherefore for want of a sufficient Replication in this Behalf, the said *D.* as before prays Judgment, and that the aforesaid *G.* may be precluded from having his Action aforesaid thereupon against the said *D.* &c.

Plaintiff rejoins.

And the aforesaid *G.* saith, That the Plea aforesaid, by him the said *G.* in Manner and Form aforesaid above in his Replication pleaded, and the Matter in the same contained, are good and sufficient in Law, for the said *G.* to have and maintain the said Action of him the said

said G. thereupon against the said D. which King's
said Plea, and the Matter in the same contained, Bench.
the same G. is ready to verify and prove as the
Court, &c. And because the aforesaid D. hath
not answered to that Plea, nor hath he hither-
to in any Manner denied the same, the said G.
as before prays Judgment, and his Debt aforesaid,
together with his Damages on Occasion
of detaining that Debt, to be adjudged to
him, &c.

Demurrer to a Rejoinder, by the Plaintiff.

And the aforesaid J. B. saith, That the
Plea aforesaid, by the aforesaid R. F. in Man-
ner and Form aforesaid above in his Rejoinder
pleaded, and the Matter in the same contained,
are in no wise sufficient in Law, &c. (as it is in
the Demurrer to the Defendant's Plea, changing
the Word Plea for Rejoinder and concludes like
it.)

Also the Defendant's Joinder to this, is as
his Joinder to a Demurrer upon his Plea,
changing *Pleading* to *Rejoining*, and concludes
like it.

And if the Demurrer be by the Defendant
to the Plaintiff's Surrejoinder, it is like his De-
murrer to the Plaintiff's Replication, using the
Words *Surrejoinder*, instead of *Replication*, &c.
And you are to observe, that when you enter
a Demurrer upon the Roll, you enter it as
other Rolls, to the end of the Joinder in De-
murrer,

King's
Bench.

murrer, and then immediately follows the Continuance.

Demurrer continued.

But because the Court of the said Lord the King now here is not yet advised, what Judgment to give of and concerning (upon) the Premisses, a Day is thereon given to the Parties aforesaid, before the Lord the King at *Westminster*, until (*such a Day*) to hear their Judgment of and concerning (upon) the Premisses, for that the Court of the Lord the King now here is not yet advised thereof, &c.

And if it be continued to a further Day, you add,

Further Continuance.

At which Day before the Lord the King at *Westminster* comes the Parties aforesaid by their Attornies aforesaid. And because the Court of the said Lord the King here, is not as yet advised of giving their Judgment of and concerning (upon) the Premisses, a Day thereon is further given to the Parties aforesaid before the Lord the King, &c. (*as before.*)

And if the Judgment be then given, you say,

Judgment for the Plaintiff, on Demurrer to his Declaration.

At which Day before the Lord the King at *Westminster* come the Parties aforesaid by their Attornies aforesaid; upon which the Record and Matters aforesaid been seen, and, by the Court of the said Lord the King now here fully understood, and all and singular the Premisses being examined, and mature Deliberation

tion being had thereupon *; For that the King's Court of the Lord the now King here sees that Bench, the Declaration of the said *A.* and the Matter in the same contained, are good and sufficient in Law, for the said *A.* to have and maintain his Action aforesaid, against the said *C.* Therefore it is considered, that the aforesaid *A.* do recover against the aforesaid *C.* his Debt aforesaid, and also *6l.* for his Damages, which he hath sustained, as well on Occasion of detaining that Debt, as for his Costs and Charges by him put to about his Suit in this Behalf, adjudged to the said *A.* by the Court of the said Lord the King here now, on his Assent. And the aforesaid *C.* in Mercy, &c.

The Entry is much the like, if it be for the Plaintiff upon his Replication, or Surrejoinder in Debt, only changing the Word *Declaration* to *Replication*, &c. *The like upon a Replication or Surrejoinder.*

* And if it be given against the Defendant, upon the Plaintiff's Demurrer to his Plea in Debt, 'tis much the like, as, For that, or Because the Court of the Lord the now King here sees that the Plea aforesaid, by the said *T.* in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are in no wise sufficient in Law to preclude the aforesaid *A.* from having his said Action thereon against the aforesaid *C.* Therefore it is considered, &c.

The like upon his insufficient Rejoinder. Rejoinder. But where Judgment is thus given on the Behalf of the Plaintiff, in Case, where a Writ of Inquiry of Damages is awarded, then after

King's
Bench.

the Words, *To have or maintain, or to preclude from having, you say,*

*Judgment
where there is
a Writ of En-
quiry.*

—— It is considered that the aforesaid *A.* ought to recover his Damages against the aforesaid *C.* on Occasion of the Premises: But because it is unknown to the Court of the said Lord the King now here, what Damages the said *A.* hath sustained, by Occasion of the Premises; therefore the Sheriff is commanded that by the Oaths of twelve honest and lawful Men of his Bailiwick he diligently enquire what Damages the aforesaid *A.* hath sustained, as well by Occasion of the Premises aforesaid, as for his Costs and Charges by him put to about his Suit in this Behalf; And that he send the Inquisition which he shall take thereupon, to the Court of the Lord the now King before the King himself at *Westminster*, on *Tuesday* next after three Weeks of *Holy Trinity*, under his Seal, and the Seals of them by whose Oaths he shall take that Inquisition, together with the Writ of the Lord the King to him thereof directed: The same Day is given to the aforesaid *C.* there, &c.

*Return of the
Writ.*

At which Day before the Lord the King at *Westminster* comes the aforesaid *A.* by his Attorney aforesaid, and the aforesaid Sheriff of *L.* to wit, *R. K.* Knight, by Virtue of the Writ of the said Lord the King, to him thereof directed, returns a certain Inquisition taken before him, at (*such a House*,) situate in the Parish of *St. L.* That the aforesaid *A.* hath sustained Damages by Occasion of the Premises aforesaid, besides his Costs and Charges, by him about his
Suit

Suit in this Particular expended, to one hundred forty-seven Pounds six Shillings and six Pence; and for his Costs and Charges, to twenty and seven Shillings and four Pence: *King's Bench.* Therefore it is considered, that the afore-said *A.* shall recover against the afore-said *B.* his Damages afore-said assessed by the Jury afore-said in the Form afore-said; and also eleven Pounds six Shillings and two Pence, for his Costs and Charges afore-said adjudged to the said *A.* by the Court of the said Lord the King by his Assent, of Increase; which said Damages amount in the whole to One hundred and sixty Pounds, &c. And the afore-said *C.* in Mercy, &c.

If the Judgment upon Demurrer go for the Defendant against the Plaintiff upon the Declaration, the Entry is as before unto

— For that it seems, (or because it seems) to the Court of the Lord the now King here, that the Declaration afore-said, and the Matter in the same contained, are no ways sufficient in Law to have and maintain the Action of the afore-said *A.* against the afore-said *C.* *Judgment against the Plaintiff.* Therefore it is considered, that the afore-said *A.* shall take nothing by his Bill afore-said, but for his false Complaint thereof shall be in Mercy: And the afore-said *C.* may go thereon without a Day, &c.

Another

King's
Bench.

Another upon Plea.

— For that it seems to the Court of the said Lord the now King here, that the Plea aforesaid by him C. in Manner and Form aforesaid above pleaded, and the Matter in the same contained, are good and sufficient in Law to preclude the aforesaid A. from having his Action aforesaid against him C. **There-fore** it is ^{subscribed} ~~considered~~ that the aforesaid A. shall take nothing by his Bill aforesaid, but for his false Complaint thereof shall be in Mercy. And the aforesaid C. may go thereon without a Day, &c.

Another.

Therefore it is considered, that the aforesaid A. shall take nothing by his Bill; and that he and his Pledges of prosecuting, to wit, J. Doe and R. Roe, shall be in Mercy for his false Complaint: And the aforesaid C. may go thereon without a Day, &c.

*Of shewing
Causes of De-
murrer.*

If you shew Causes of Demurrer, then you may say as before to the Words to answer, and then add,

— **And** for Causes of Demurrer in Law upon the Declaration aforesaid, the same C. according to the Form of the Statute in such Case lately made and provided, shews, and to the Court here demonstrates these Causes following, to wit, * That it doth not appear by the Declaration aforesaid, that there is any

* Such Causes
as the Case re-
quires.

Memo-

Memorandum, or Promise, (in the Declaration King's
aforesaid specified,) in Writing signed by the Bench.
said *A.* or any other Person by him lawfully
authorized, as it ought, according to the Form
of the Statute in such Case made and pro-
vided; and that the Declaration aforesaid is
uncertain, insufficient, and wants Form, &c.

Or you may put the Causes at last, after the
Word *Precluded, &c.*

Note; You may amend your Declaration
before Joinder in Demurrer, upon Payment
of Costs.

By the Statute for *Amendment of the Law*, Stat. 4 & 5
is enacted, That where any Demurrer shall Anne, on De-
be joined and entred in any Action, or any murrer joined,
Suit in any Court of Record, the Judges shall Judges to pro-
proceed and give Judgment according as the ceed without
very Right of the Cause and Matter in Law Defect, &c.
shall appear unto them, without regarding any except such as
Imperfection, Omission or Defect in any Writ, be specially set
Return, Plaint, Declaration, or other Pleading, down.
Process, or Course of Proceeding whatsoever;
except those only which the Party demurring
shall specially and particularly set down and
express, together with his Demurrer, as Cause
of the same; Notwithstanding that such Im-
perfection, Omission, or Defect, might hereto-
fore be taken to be Matter of Substance, and
not aided by the Statute 27 Eliz. cap. 5. (in-
titled, *An Act for the Furtherance of Justice,*
in Case of Demurrer and Pleadings;) so as
sufficient Matter appear in the said Pleadings
upon which the Court may give Judgment,
according

Demurrers.

according to the very Right of the Cause. And therefore no Advantage or Exception shall be taken of or for an immaterial Traverse, or of or for the Default of entring Pledges upon any Bill or Declaration; or for the Default of alledging the bringing into Court any Bond, Bill, Indenture, or other Deed whatsoever mentioned in the Declaration or other Pleading; or of or for the alledging the bringing into Court *Letters Testamentary, or Letters of Administration*; or of or for the Omission of *with Force and Arms, and against the Peace*, or either of them; or of or for the want of Averment of *this he is ready to verify by the Record*; or of or for not alledging *as appears by the Record*. But the Court shall give Judgment according to the very Right of the Cause as aforesaid, without regarding any such Imperfections, Omissions and Defects, or any other Matter of the like Nature, except the same shall be specially and particularly set down and shewn for Cause of Demurrer.

And *Note*, That though the want of Form is not sufficient upon a general Demurrer, yet it being made a Cause of Demurrer may prevail; for the Judge is to have no Regard to want of Form, but only to such Causes as the Party demurring shall set down.

And if there be want of Substance, a general Demurrer will suffice, without shewing Causes. But *Quare*.

Of Issues and Demurrers.

King's
Bench.

When there are two or more Issues upon a Pleading, then after the Tender of the last Issue, And of this he puts himself upon the Country: And the aforesaid A. likewise, &c. you add, AND as well to try that Issue, as the aforesaid other Issues, between the Parties aforesaid above likewise joined, let a Jury come before the Lord the King at *Westminster* on *Wednesday* next after — And who neither, &c. to recognise, &c. because as well, &c. The same Day is given the Parties aforesaid there, &c.

Where there is a Demurrer to one Part of the Declaration, and an Issue to the other Parts, the Trial may either be before, or after the Arguing of the Demurrer, at the Election of the Plaintiff.

When Trial may be, if Demurrer to one Part of the Declaration, and an Issue to another.

But if Judgment be given for the Plaintiff on the Demurrer, he may enter a *Non-pros* as to the Issue, and proceed to a Writ of *Inquiry* on the Demurrer; but without a *Non-pros* he cannot have a Writ of *Inquiry*, because on the Trial of the Issue the same Jury will ascertain the Damages for that Part to which the Demurrer was.

Of Non-pros and Inquiry on Demurrer.

And the Jury must, if they find the Issue for the Plaintiff, give Damages upon the Issue and Damages upon the *Inquiry* severally: But if they find the Issue for the Defendant, then they must assess Damages upon the *Inquiry*, and if the Court gives Judgment for the Plaintiff

Damages on Issue and Inquiry.

King's
Bench.

Plaintiff upon the *Demurrer*, he shall have his
Costs and Damages.

How to make
the *Distringas*.
gas.

But if the Issue be tried first, then the
Distringas Juratorum must be, As well to try
the Issue joined between the Parties, as to in-
quire of the Damages, if Judgment shall be
given for the Plaintiff, &c.

Demurrer and Issue.

AND as well to try this Issue whereof the
Parties aforesaid have put themselves upon the
Jury of the Country, as to inquire what Da-
mages the aforesaid *A.* hath sustained by Oc-
casion of the Premisses, whereof the Parties
aforesaid have put themselves upon the Judg-
ment of the Court, if Judgment happen to
be given therein for the aforesaid *A.* against
the aforesaid *C.* let a Jury come before, &c.
(as in others unto there, &c.)

Postea there-
on.

Afterwards Process is continued, (&c. as
in others, to the End of the Verdict) 200 l. Da-
mages; and for those Costs and Charges, to
43 s. (Then add) AND as to the inquiring
what Damages the aforesaid *A.* hath sustained
by Occasion of the Premisses within written,
whereof the Parties aforesaid have put them-
selves upon the Judgment of the Court, if
Judgment happens to be thereof given for the
aforesaid *A.* against the aforesaid *C.* then the
same Jurors say upon their Oath, That the
aforesaid *A.* hath sustained Damages by Occa-
sion thereof, to 100 l. Therefore it is con-
sidered, that the aforesaid *A.* do recover a-
gainst the aforesaid *C.* the Damages afore-
said

Judgment.

said assessed by the said Jury in Form afore- King's
said; and also 11 l. 6 s. 8 d. for the Costs and Bench.
Charges aforesaid adjudged by the Court of
the said Lord the King now here to the said
A. by his Assent, of Increase: Which said
Damages amount in the whole to 313 l.
6 s. 8 d. And the aforesaid C. in Mercy, &c. *Mery.*

Issue and Demurrer.

Not guilty as to the Wounding, and justifi-
fy as Church-wardens to the rest of the
Assault.

Plaintiff demurs to the Justification.

Defendant joins in Demurrer.

— Here thereof as yet, &c. And as well
to try this Issue, (&c.) as to the inquiring what
Damages, (&c.) there, (&c.) At which Day,
(&c.) And because the Court, (&c.) is not as
yet advised, a Day is thereupon further, (&c.)
At which Day, (&c.) And upon this having
seen, (&c. that the Plea was sufficient,) There- *Judgment by*
fore it is considered, that the aforesaid A. *Nil capiat*
shall take nothing by this Bill, and that he *per billam.*
and his Pledges of prosecuting, to wit, J. Doe
and R. Roe, shall thereupon be in Mercy for
his false Complaint: And the aforesaid C. may
go therein without a Day, &c.

After a Demurrer to a Plea in Abatement, *Judgment on*
the Judgment on a *Respondeas Ouster*, some a Respon-
ignorantly enter up the second Plea, taking no *deas Ouster.*
Notice

King's
Bench.

Notice of the Demurrer, or the Judgment thereon, which is a Mistrial and void. The *Respondeas Ouster* and the *Plea* ought to be entered upon the *Demurrer Roll*; and the Record for Trial is to be taken off the *Roll*.

The Form is thus:

After the Demurrer is continued to the Day of the Judgment given, then say,

At which Day comes as well the afore-said (*Plaintiff*) by his Attorney afore-said, as the afore-said (*Defendant*) in his proper * Person: And upon this having read and heard the *Plea* afore-said by the afore-said (*Defendant*) above pleaded, the Court of the said Lord the King now here sees, that the same *Plea* is insufficient for the Court of the Lord the King now here to quash the Bill afore-said; And that the afore-said (*Defendant*) to the Bill of the afore-said (*Plaintiff*) may answer, &c. Upon which the same (*Defendant*) by *A. B.* his Attorney saith, That he did not undertake and promise in Manner and Form as the afore-said (*Plaintiff*) hath above declared against him: And of this puts himself upon the Country: And the afore-said (*Plaintiff*) likewise, &c. **Therefore** let a Jury come thereupon before the Lord the King, (*as in others.*)

* If the *Plea* be pleaded in proper Person; but if by an Attorney, then name the Attorney, and afterwards leave out the Attorney's Name, and say only *by his Attorney afore-said saith, &c.*

In order to make up the Paper-Book on a King's Demurrer, deliver a Copy of the Declaration Bench. to the Clerk of the Papers, who makes up the Paper-Book, and gives a four Days Rule in the Margin thereof, *for the Defendant to re-join, otherwise Judgment.* If the Defendant returns the Book in Time, and pays you 8*d.* per Sheet for his Pleadings, you ingross your Proceedings on the Roll; enter them with Mr. Lantrow; carry the Roll into Court, and move to make it a Record, then draw up the Rule, and set the Cause down for a *Concilium*; draw up and serve the Rule; enter your Cause with the Clerk of the Papers; deliver your Paper-Books to the Judges, you give 2*s.* to each of their Clerks, and argue the Demurrer.

Of making up the Paper-Book.

Of delivering Copies to the Judges.

If the Plaintiff demurs, or takes Issue on the Defendant's Plea, &c. and the Defendant (in Case of a Demurrer) joins therein, and the Plaintiff will not make up the Book, and enter it on Record, the Defendant may make up the Book and enter it, upon giving a Rule for that Purpose. The Defendant in this Case must deliver the Book to the Plaintiff, and pay him for the Entry of his (*the Defendant's*) Pleadings, because the Plaintiff will perhaps enter the Issue, as he may before the Rule is out, which Rule must be served on Plaintiff's Attorney at the same Time the Book is delivered to him. And if the Plaintiff does not enter the Issue, the Defendant may, when the Rule is out, and give Notice of Trial by Proviso, but then the Plaintiff ought to return to the Defendant the Money he received from him for the Entry on his Part.

King's
Bench.

Judgment.

Inquiry.

Notice of Trial.

When to join
in Demurrer.

When Notice
of Inquiry to
be given.

When Demur-
rer may be
waived.

If Judgment goes for the Plaintiff, draw up your Rule for Judgment, serve the same, and give Notice of executing a Writ of Inquiry: But if it is in Debt, you give no Notice of executing a Writ of Inquiry, but take out your Execution.

If there is an *Issue* as to Part, and *Demurrer* as to the other Part, you give Notice of Trial, and proceed to try your Cause, and argue your *Demurrer* too, if needful, in Manner as is before directed.

But if the Plaintiff refuses to join in *Demurrer*, you may have a Rule from the Master of the Office, which is entered with the Clerk of the Rules; and if he does not join in *Demurrer* before the Rule is out, you may sign a *Non-pros.*

Note; On Delivery of the Paper-Book of *Demurrer* to the Defendant's Attorney, you cannot give Notice of executing a Writ of Inquiry; but you must stay till after you have obtained Judgment.

Note also, The Defendant's Attorney may, at the Expiration of the Time for returning the Paper-Book, wave his *Demurrer*, and give the General Issue; and Notice of Trial must be given but from the Time of pleading the General Issue.

Of Writs of Error.

The Manner of entring a Writ of Error of Record out of the Common Pleas returnable in the King's Bench.

THE Lord the King hath given in Charge Error in B. C. returnable in B. R. to the beloved and faithful Sir *John Willes*, Knt. his Chief Justice of the Bench, his Writ closed in these Words, to wit, **George** the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. (and so enter the Writ of Error and Return, and the whole Record annexed, to) Mercy, &c.

Common Error assigned.

Afterwards, to wit, on *Saturday* next after the *Octave* of *St. Hillary* in this same Term, before the Lord the King at *Westminster* comes the aforesaid *C. D.* by *J. G.* his Attorney, and saith, That in the Record and Process aforesaid, and also in the giving of the Judgment in the *Plaint* aforesaid, there is manifest Error, in this, to wit, that by the Record aforesaid it appears, that the Judgment aforesaid was given in Form aforesaid for the said *A. B.* against the aforesaid *C. D.* where by the Law of the Land that Judgment ought to be given for the aforesaid *C. D.* against the

Y 2

aforesaid

King's
Bench.

aforesaid *A. B.* therefore in that there is manifest Error. And the aforesaid *C. D.* prays the Writ of the said Lord the King to be provided for the aforesaid *A. B.* being before the said Lord the King, to hear the Record and Process aforesaid: And it is granted to him, &c. By which the Sheriff aforesaid is commanded, that by honest, &c. he cause the aforesaid *A. B.* to know, that he be before the Lord the King in fifteen Days from the Day of *Easter*, wheresoever, &c. to hear the Record and Process aforesaid, if, &c. and further, &c. The same Day is given to the aforesaid *C. D.* &c. **At which Day** before the Lord the King at *Westminster* comes the aforesaid *C. D.* by his Attorney aforesaid: And the Sheriff hath not thereof sent the Writ. And the aforesaid *A. B.* at the same Day being solemnly called, likewise comes, by *W. T.* his Attorney; upon which the same *C.* as before saith, That in the Record and Process aforesaid, and also in giving the Judgment aforesaid, there is manifest Error, alledging the Errors aforesaid by him in Form aforesaid alledged, and prays, that the Judgment aforesaid for those Errors, and others being in the Record and Process aforesaid, may be reversed, annulled, and intirely for nothing esteemed; and that he may be restored to all Things which he lost by Occasion of the Judgment aforesaid; and that the Court of the said Lord the King here may proceed as well to the Examination of the Record and Proceedings aforesaid, as of the Matters aforesaid above assigned for Errors; and that the aforesaid *A. B.* may rejoin to the Errors, &c. Upon which the same *A. B.* saith, that

Plaintiff re-
joins.

that there is neither Error in the Record and King's Process aforesaid, nor in giving the Judgment Bench aforesaid, and prays, that the Court of the Lord the King here may proceed as well to *Continuance*, the Examination of the Record and Proceedings aforesaid, as of the Matters aforesaid above assigned for Errors, and that the Judgment aforesaid may be affirmed in all Things. **But** because the Court of the said Lord the King now here is not as yet advised to give their Judgment of and upon the Premisses, a Day is thereof given to the Parties aforesaid before the Lord the King at *Westminster* until the Morrow of the Holy *Trinity* (and so it is continued until *Hillary*): **At which Day** before the Lord the King at *Westminster* come the Parties aforesaid by their Attornies aforesaid: Upon which the Court of the Lord the King now here having seen and fully understood all and singular the Premisses, and diligently examined and inspected as well the Record and Proceedings aforesaid, and the Judgment given upon the same, as the Causes and Matters by the aforesaid C. above assigned for Error, for that it appears to the Court of the Lord the King now here, that neither in the Record and Process aforesaid, nor in the rendering of the Judgment aforesaid, is there any Thing vicious or defective, and that that Record was no Error: **It** is considered, that the Judgment aforesaid shall be affirmed in all Things, and stand in all Force and Effect, notwithstanding the said Causes and Matters above assigned for Error. **And further** it is considered by the Court of the Lord the King now here, that the aforesaid A. B. do re-

Judgment affirmed.

King's
Bench.

Costs.

cover against the aforesaid *C. D.* twelve Pounds, adjudged to the same *A. B.* by the Court of the Lord the King now here, according to the Form of the Statute in this Case lately made and provided, for his Costs, Charges and Damages which he hath sustained by Occasion of the Delay of Execution of the Judgment aforesaid, by Pretence of the Prosecution of the Writ of Error aforesaid, and that the aforesaid *A. B.* may have Execution thereof, &c.

Judgment Reversed.

FOR this, that it appears to the Court of the Lord the King now here, that in the Record and Proceedings aforesaid, and also in giving the Judgment aforesaid, there is manifest Error; **It is considered** that the Judgment aforesaid for that Error, and others in the Record and Proceedings aforesaid, shall be reversed, annulled, and intirely for nothing esteemed; and that the aforesaid *J.* may be restored to all Things which he hath lost by Occasion of the Judgment, &c.

How sued out. To sue out a Writ of Error, carry a *Pracipe* or Note to the Curfitor of the County wherein the Action is laid, and he will make out the Writ.

London, ff. **W** **RIT** of Error for C. D. ^{King's Bench.}
 at the Suit of A. B. on a ^{Præcipe.}
 Judgment in Case, given in the King's
 Bench by Bill.

Dated

Returnable

*Error in Banco Regis returnable in
 Scaccario.*

*A Writ of Error in the King's Bench, re- Allow-
 turnable in the Exchequer Chamber, must be Error.*
 allowed by the Clerk of the Errors, and a
 Copy of such Allowance must be served on the
 Defendant's Attorney in *Error*.

Writs of Error returnable in C. B. or *Scac'* shall
 be immediately delivered to the Clerk of the
 Errors, and 'till then Execution not to be staid.
Reg. Cur. Easter 36 Car. 2.

And the Plaintiff in Error must put in Spe- *When Bail to*
 cial Bail (when it is required) within four Days *be put in.*
 after the Delivery of the Writ to the Clerk of
 the Errors, or the Defendant may proceed to
 Execution. *Per Reg. Cur. 36 Car. 2.*

And Notice of putting in Bail must be given *And Notice*
 immediately. *Per Reg. Cur. Mic. 5 W. & M. given.*

And if Bail be not excepted against within *Exception.*
 20 Days after such Notice, the Bail to be al-
 lowed. *Same Rule.*

Exception to be entred in the Clerk of the
 Errors's Book, and Notice must be given to the
 Plaintiff in Error. And a Rule for better Bail
 to be had of the Clerk of the Errors. And if
 the Bail don't justify, or there be not better *Justification.*

King's
Bench.

Bail put in within four Days after Notice of the Rule, Execution may be sued out; but the Writ of Error still remains, and may be proceeded upon. It is only a *Superfedeas* to the Execution that is taken away.

Rule to transcribe.

If the Writ is returnable the first Return in Term, (there being but two Returns in each Term for that Purpose) the Clerk of the Errors will give you a Rule to transcribe in Eight Days, a Copy of which you must serve on the Attorney, for the Plaintiff in Error, and he must transcribe the same Term, alledge Diminution the Term following, and assign Errors the Term next after, and the Term after that argue the Errors. But if the Defendant in Error sleeps, and does not give a Rule to transcribe upon the Return of the Writ of Error, and a Term or two, or any Time after, gives a Rule to transcribe, the Plaintiff in Error must transcribe, and alledge Diminution the same Term, assign Errors the next, and argue the Term after.

Error quod coram vob' residet.

Allowing
Errors

THIS Writ of Error is allowed in Court by the Clerk of the Rules, who draws up a Rule of such Allowance, and then the Attorney for the Defendant serves the Plaintiff's Attorney with a Copy of the Writ of Error, and Rule, whereby it appears to be allowed; upon which the Defendant's Attorney in Errors draws up a Rule in Form following.

A. against

King's
Bench.*A. against B. in Error.*

Unless the Plaintiff in Error assigns Errors within four Days after Notice of this Rule given to him or his Attorney, let a *Non prof.* be made for the Defendant in Error. *Rule to assign Errors.*

This Rule Mr. *Clarke* the Secondary signs, and then it must be carried to the Clerk of the Rules, who will draw up a Rule from it upon Stamp, for which you pay 2 s. 4 d. and then serve a Cpy on the Attorney for the Plaintiff in Error; and if he assigns any Error, you must either reply to it, or *Demur*, as you see Occasion: And in Case of *Demurrer*, you make up a Book as you do other Paper Books, and put the Cause upon Return of the Book in the Paper to be argued; the Errors are to be assigned, and entered upon the Record of the Judgments.

Note; Upon this Writ of Error there is no Bail to be given, in respect Errors may be assigned, and the Book made up the same Term. The Error to be assigned must be Facts, for the Judges of the same Court cannot be Judges of any Error upon Record, which is supposed to be their own Entry, and upon Issue taken of Error in Fact, you may proceed to Trial *per pais*, as in other common Cases.

Error from Ireland.

To compel the Plaintiff in Error to assign Errors you must move the Court, and it will order

King's
Bench.

order him to assign Errors within a Week after Service of the Rule: And if the Plaintiff, his Attorney, or Agent can't be found, the Court will order the Sticking up the Rule in the King's Bench Office shall be good Service.

And the Plaintiff in Error must move the Court for a Rule for the Defendant to join in Error, who has four Days to do it in after Service of the Rule.

And there must be an Affidavit verifying the Assignment of Errors from *Ireland* annexed to such Assignment.

And if Judgment is affirmed, the Record is transmitted to *Ireland*, and the Court there awards Execution.

Error in Parliament.

IF you bring a Writ of *Error* in Parliament, to reverse a Judgment in the King's Bench, you must get the Cursitor to procure a Warrant from the King, for which you are to pay 5*l.* and for Allowance with the Clerk of the *Errors* you likewise pay 4*l.* and then the Lord Chief Justice carries the Record, and a Transcript thereof, up to the House of Lords; and after they are examined, there he leaves the Transcript with the Lords, but brings the Record back again. Then, if you are for the Defendant in *Error*, you must apply to some Lord, to move, that the Plaintiff in *Error* may assign his Errors; but if you are for the Plaintiff, get him to move, that upon your assigning *Errors*, the Defendant may appear and make his Defence. After hearing of Counsel on both Sides,

Usually two on
each Side.

and the Lords having either affirmed or reversed the Judgment, the Clerk of the Parliament re-^{King's}mands the Transcript of the Record into the Bench, with the Affirmation or Reversal thereof to be entered there upon Record.

In Matters of Weight and Difficulty, the Lords examine the *Errors*, with the Advice and Counsel of the Judges, who inform them what the Law is in such Cases; and if Judgment be reversed, then Commandment is given to the Lord Chancellor to do Execution accordingly; but if the Judgment be affirmed, the Court of King's Bench is to proceed to Execution, &c.

Non Prosequendo.

Non Prof. *for not Declaring after the Cause removed by Habeas Corpus.*

London, to wit, **C.** D. who was arrested by **C.** Virtue of a certain Plaint, levied in the Court of the Lord George the 2d. now King, held at London aforesaid in the Guildhall of the same City — Day of — in the — Year of the Reign of the said Lord the King, before H. P. Esq; one of the Sheriffs of the City of London aforesaid, against him the said C. at the Suit of A. B. in a certain Plea of Trespass upon the Case, to the Damage of the said A. 100 l. And for Want of sufficient Bail, and Security to answer to the aforesaid A. in the Plea aforesaid, was detained in the Prison
of

Non Prosequendo.

of the Lord the King, under the Custody of the aforesaid *H. P.* Esq; then one of the Sheriffs of the City aforesaid, for the Cause aforesaid. And afterwards, to wit, — Day of — in the — Year aforesaid, the same *C.* by Virtue of a certain Writ of the said Lord the King, for having the Body with the Cause, directed to the Mayor and Aldermen, and Sheriffs of the City of *London*, and issuing out of the Court of the said Lord the King, before the King himself at *Westminster* in the County of *Middlesex*, was brought by the aforesaid *H. P.* then one of the Sheriffs of the City aforesaid, afterward, to wit, the same — Day of — in the — Year aforesaid, before *E. R.* Knt. one of the Justices of the said Lord the King, assigned to hold Pleas in the Court of the said Lord the King, before the King himself, at his Chambers, situate in *Serjeants-Inn* in *Chancery-Lane*, *London*. And then and there for want of Bail, and Security to answer the aforesaid *A. B.* in the Plea aforesaid, was committed by the same Justice, to the Custody of the Marshal of the *Marshalsea* of the Court of the said Lord the King, before the King himself, at the Suit of the aforesaid *A. B.* in the Plea aforesaid. And the aforesaid *C.* so being in the Custody of the Marshal of the *Marshalsea* aforesaid, the aforesaid *A. B.* did not exhibit into the same Court of the Lord the King, before the King himself, his Bill or Declaration in any Action whatsoever, within two Terms after the Commitment of the said *C.* into the Custody of the Marshal of the *Marshalsea* aforesaid, at the Suit of the aforesaid *A.* as it is said, nor is his Complaint aforesaid further prosecuted

Secuted against the said C. Therefore it is King's considered that the aforesaid A. shall take no Bench thing by his Plaint aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe*, and *R. Doe*, be thereupon in Mercy, &c. And the aforesaid C. may go thereon without a Day, &c.

Entry of a Non Prof. upon a Latitat.

London, to wit, **A.** B. was * arrested by No Rule is given to declare. * Q. If the Writ is notailable, would it not be more proper to say A. B. was served With a Copy of a Writ of Latitat (or Bill of Middlesex, as the Case is.) Note; These Judgments upon Non Prof. must be drawn upon Double Half-Crown Stamps, and entred with Mr. Lantrow, and Costs signed by the Master; as in other Judgments by Confession, or Non informatus.

Lord the King, of *Latitat*, issuing out of the Court of the said Lord the King, before the King himself in *Easter Term* last past, and directed to the Sheriffs of *London*, returnable before the said Lord the King at *Westminster*, on *Wednesday* next, after — now last past, to answer C. D. of a Plea of *Trespass*: And also to answer to a Bill, &c. (as in the Process to the end of the *Acetiam*). And the same A. B. appeared at the same Day, by — his Attorney, according to the Form of the Statute in such Case lately made and provided. And the aforesaid C. D. hath not declared in the same Court of the said Lord the King, before the King himself at *Westminster*, by his Bill or Declaration in any Personal Action, or Ejectment, against the said A. B. before the End of the Term of the *Holy Trinity*, then next following, being the next Term after the Appearance of the said A. B. at the Suit of C. D. There-fore

Non Prosequendo.

fore it is considered, that the aforesaid C. D. take nothing by his Writ aforesaid, but that he be in Mercy, &c. And it is further considered, that the aforesaid A. B. do recover against the aforesaid C. D. 30 s. for his Costs and Charges, by him about his Defence in this Behalf sustained, adjudged to the same A. B. by the Court of the said Lord the King now here, according to the Form of the Statute in such Case lately made and provided : And that the aforesaid A. B. may have Execution thereof against the aforesaid C. D. &c.

*Entry of a Non Prof. upon an Action
by Latitat, and Judgment there-
upon.*

Somerſet, ſſ. **A.** B. was arrested at the Suit of C. D. by Virtue of a Writ of the Lord the King, of Latitat, returnable before the Lord the King, at Westminster, (such a Day as in the Latitat,) in the — Year of the Reign of the said Lord, the now King. And the said C. then and there, brought in the Court of the Lord the King here his certain Bill against the said A. in Custody of the Marshal, &c. of a Plea, (&c.) which said Bill the same C. D. against the aforesaid A. did not afterwards prosecute : Therefore 40 s. are adjudged to the same A. for his Costs and Charges, by him in this Behalf expended, according to the Form of the Statute, &c. (as afterwards.)

Another

King's
Bench.

Another.

L. to wit, **A.** *B.* who brought his Bill of a Plea of Trespafs against *C. D.* to appear by Pretence of a Writ of the Lord the King, of *Latitat*, at the Suit of the said *A. B.* issuing out of the Court of the said Lord the King, hath not prosecuted that Bill; therefore forty Shillings are adjudged to the same *C.* by the Court of the Lord the King here, for his Costs and Charges, according to the Form of the Statute, &c. And he and his Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, in Mercy, &c. And the aforesaid *A.* may go thereupon without a Day, &c.

Another, for not Declaring within three Days.

S. to wit, **A.** *B.* being arrested at the Suit of *R. G.* hath personally appeared before the Lord the King at *Westminster* on *Wednesday* next after — And because the aforesaid *R.* hath not declared against the aforesaid *A. B.* within three Days from thence next following, therefore twelve Shillings are adjudged to the same *A.* by the Court of the Lord the King, for Costs and Charges, according to the Form of the Statute, (&c.)

Entry

King's
Bench.

*Entry of a Non Prof. for want of the
Plaintiff's Replication.*

After setting forth the Proceedings, say,

** You take this Rule from the Master, and enter it with the Clerk of the Papers, and serve it on the Plaintiff's Attorney.*

AND upon this the aforesaid (*Defendant*) prays, That the (*Plaintiff*) may reply to the Plea of the said (*Defendant*); upon which a Day (as in the * Rule that is given,) is given by the Court of the said Lord the King now here, to the said (*Plaintiff*) to reply to the aforesaid Plea of the said (*Defendant*); and the same (*Plaintiff*) is required by the Court of the said Lord the King now here, that he should reply at the same Day. At which Day the aforesaid (*Defendant*) comes by his Attorney aforesaid, before the Lord the King at *Westminster*; And the aforesaid (*Plaintiff*), although solemnly required, does not come, nor hath he replied to the Plea of the aforesaid (*Defendant*), nor further prosecuted his Bill aforesaid, against the said (*Defendant*): Therefore it is considered by the Court here, that the aforesaid (*Plaintiff*) do take nothing by his Bill aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, be in Mercy. And the aforesaid (*Defendant*) thereupon go without a Day, &c. And it is further considered by the Court here, that the aforesaid (*Defendant*) do recover against the aforesaid (*Plaintiff*), 3 l. for his Costs and Charges by him sustained about his Defence aforesaid in this Behalf, adjudged to the same (*Defendant*) by the Court of the Lord the King

now

now here, according to the Form of the Statute in such Case thereupon made and provided. ^{King's Bench.} And the same Defendant may have Execution, (&c.)

Non Prof. for not joining in Demurrer.

And upon this the said (*Defendant*) prays, That the aforesaid (*Plaintiff*) may join in Demurrer with the said (*Defendant*); and thereupon a Day is given by the Court of the said Lord the King now here, to the aforesaid (*Plaintiff*) before the Lord the King at *Westminster*, until * *Tuesday* next after the *Octave* of St. *Martin*, from thence next following to join with the said (*Defendant*) in the Demurrer aforesaid. And the aforesaid (*Plaintiff*) at the same Day being solemnly required did not come, nor further prosecute his Bill aforesaid against the aforesaid (*Defendant*), but made Default: **Therefore** it is considered, that the aforesaid (*Plaintiff*) take nothing by his Bill aforesaid, but that he and Pledges of prosecuting, to wit, *John Doe*, and *Richard Roe*, be in Mercy: And the aforesaid (*Defendant*) may thereupon go without a Day, &c. And further, &c. (as before.) * *As in Rule;*

Entry of a Non Prof. for want of the General Issue.

And of this he puts himself upon the Coun- You must
try: And the aforesaid (*Defendant*) prays, ^{take a Rule}
Z That ^{as before.}

Non Prosequendo.

That the aforesaid (*Plaintiff*) might reply to the Plea of him the (*Defendant*); upon which the same (*Plaintiff*) is directed by the Court of the said Lord the King now here, that he reply to the aforesaid Plea, and enter his Issue in the Plea aforesaid, on *Wednesday* next after — at his Peril. Afterwards in this same Term comes the aforesaid (*Defendant*) by his Attorney aforesaid before the said Lord the King at *Westminster*; and the aforesaid (*Plaintiff*), though solemnly required, does not come, nor hath he replied to the Plea of the aforesaid (*Defendant*), nor farther prosecuted his Bill aforesaid against the same (*Defendant*): Therefore, (*as above.*)

Non Prof. against the *Plaintiff* in Debt, after *Demurrer* joined, and Costs for the *Defendant*.

— At which Day the aforesaid (*Defendant*) by his Attorney aforesaid comes into Court here, and the aforesaid (*Plaintiff*) the fourth Day of the Plea, being solemnly required does not come, nor further prosecute his Bill aforesaid; therefore he and his Pledges of prosecuting be in Mercy, &c. And the aforesaid (*Defendant*) may thereupon go without a Day, &c. It is also considered, that the aforesaid (*Defendant*) do recover against the aforesaid (*Plaintiff*) his Damages by Occasion of the Premises to — by the Court here adjudged to the same (*Defendant*) at his Request for his Costs and Charges in that Be-
half

half sustained, according to the Form of the King's Statute thereof lately made and provided, &c. Bench. (*as in others*).

Nolle prosequi after Issue joined.

Afterwards, to wit, the — Day of — in the — Year, (&c.) the aforesaid (*Plaintiff*) comes here into Court by his Attorney aforesaid, and confesses here in Court, that he will not further prosecute against the aforesaid (*Defendant*) in the Plea aforesaid; therefore the same (*Defendant*) may go thereof without a Day, (&c.)

Entry of a Non Prof. at Bar.

Continue the Postea as in others unto —
Who to the Truth of the within contained being called, elected, tried and sworn, and to give their Verdict at the Bar of this Court of and upon the Premises, withdrew to consult among themselves; and afterwards returned to the same Bar to give their Verdict in this Behalf: Upon which the aforesaid Plaintiff, being solemnly required, does not come, nor is his Bill within written further prosecuted: *Therefore, (&c.)*

Of Proceedings by Original Writ in the King's Bench.

IT is before observed under Ejectment, that the Proceedings in this Court by Original Writ are almost the same as in the Court of Common Pleas.

But *Note*; You seldom proceed against any Person by Original in the King's Bench in Actions of *Debt, Detinue, Covenant, or Account*; though you may in all other personal Actions: Whereas the Court of Common Pleas, in their Way of proceeding by Original, do take in all Manner of Actions, as well real as personal and mixt.

If the Defendant is to be arrested, or served with a Copy of the Process in *London*, you draw a *Præcipe* for a Filacer in this Form:

London, to wit, If A. B. make you secure, then put C. D. late of — (naming the Place of the Defendant's Abode,) in your Bailiwick, (the Addition of the Defendant's Degree, Trade, or Occupation,) of a Plea, that whereas the said C. D. (and so set forth the whole Cause of Action, as in a Declaration; but instead of And thereof he brings this Suit, say, as he saith.

Original returnable in the King's Bench on King's
the Octave of the Purification of the Bench.
Blessed Mary, wheresoever, &c.

Ca. returnable in fifteen Days from Easter-
Day.

E. T. Attorney for the Plaintiff.

If the Action be laid in *Middlesex*, then
you must draw you *Præcipe* thus:

Middlesex, to wit, If A. B. make you se- *Præcipe in*
cure, then put C. D. late of *Ipsington* in your *Middlesex*.
County, Esq; (&c.)

The Original is the Foundation of the *Capias*, and all other Process sued out afterwards; the Return whereof is usually the Teste of the *Capias*, except it be upon the Essoin-day of any Term, and then the *Capias* must be tested the first Day of that Term; and there must always be fifteen Days between Teste and Return of the Original, and likewise of the *Capias*.

But if you set down the Return of the *Capias*, the Filacer of Course takes Care of the rest; for most commonly the *Capias* is taken out before the Original, (as the Course is in the Common Pleas,) by leaving the *Præcipe* with the Filacer, who makes you out a *Capias* thereupon; or you may for Expedition make your *Capias* out your self, and let your Filacer sign it, and then carry it to be sealed at the Seal-Office. The *Præcipe* is left with the Filacer, and he carries it with others in convenient Time to the Curfitor, who

Z 3

makes

Original Writs.

makes him Originals thereupon; and after they are sealed delivers them to the Filacer, who, after they are returned, files them with the *Custos Brevium*.

The Form of the Capias in London is as follows:

The Capias.

GEOURGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriffs of London, Greeting: We command you, that you take C. D. late of (&c.) if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before us in fifteen Days of Easter, wheresoever we shall then be in England, to answer unto C. D. of a Plea, (*setting forth the Action as in the Præcipe*), to the Damage of the said A. — Pounds, as he saith: And have you there this Writ. **Witness** Sir William Lee, Knt. at Westminster the — Day of — in the — Year of our Reign.

If the Defendant cannot be taken where the Action is laid, but resides in some other County, then upon a *Non est inventus* returned upon the *Capias*, directed to the Sheriff of the County where the Action was first laid, the Filacer thereof will make you a *Testatum Capias* into any other County, or the Filacer will make you out, or you may make out your self, a *Testatum Capias*, without first taking out the *Capias*, and this *Testatum Capias*

Capias is often sued out by the Filacer of King's London and Middlesex, in order to try the Bench. Cause there, if the Defendant resides in another County.

The Form of a Testatum Capias out of London into Berks.

Gorge, (&c.) To the Sheriff of Berks, Greeting: We command you, that you take C. D. late of R. in the County of Berks, Gent. if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before us, (*the Return*) wheresoever we shall then be in England, to answer unto A. B. of a Plea, (*as in the Prae-cipe, and after as it is said you add,*) for that our Sheriffs of London have returned to us, to a certain Day now past, that the aforesaid C. is not to be found in their Bailiwick, whereupon it is testified in our Court before us, that the aforesaid C. lies hid and runs up and down in your County: And have you there this Writ. Witness, (&c.)

The *Alias* and *Pluries Capias*, and *Testatum Alias and Capias*, are the same as the former, only adding after, *We command you as we have before (or oftentimes) commanded you, (&c.)* Pluries, Capias, and Test. Ca'.

On these special Writs by Original (where the Damages are laid above 40 l.) you pay a Fine to the King, which the Filacer receives for the Curfitor, and is as followeth :

King's
Bench.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From 40 <i>l.</i> to 66 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> that	00	06	08
is, 100 Marks,			
From 100 Marks to 100 <i>l.</i>	00	10	00
From 100 <i>l.</i> to 133 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> that	00	13	04
is, 200 Marks,			
From 200 Marks to 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i>	00	16	08
From 166 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to 200 <i>l.</i>	01	00	00
For every 100 Marks more,	00	06	08
For every 100 <i>l.</i> more,	00	10	00

Upon this *Capias* the Defendant is arrested, if bailable, and the Sum for which the Defendant is held to bail must be indorsed on the Back of the *Capias* in this Manner, *The Plaintiff's Affidavit filed for* (the Sum in the Affidavit) and the Filacer signs it.

* If the Defendant be only served, he must enter his Appearance with the Filacer.

The Defendant being,* arrested, and Bail above being put in before the Filacer, you then proceed to draw your Declaration in this Manner:

Trinity the 13th and 14th of King George the Second.

London, to wit, C. D. late of (as in the *Capias*) was attached to answer A. B. of a Plea, (as the Case is) and whereupon the said A. by E. T. his Attorney complains, wherefore (verbatim, as in the *Capias*,) but instead of (as it is said) you say, and thereof brings his Suit, &c.

You write this Declaration copy-wise, deliver it to the Defendant's Attorney, who will

will pay 4 *d.* a Sheet. You give a Rule to King's Bench. You plead with the Clerk of the Rules, and demand a Plea of the Defendant's Attorney before the Rule to plead is out.

Note; It is said, that if the Writ be returnable the first Return of *Hillary* or *Trinity* Term, or the first or second Return in *Easter* or *Michaelmas* Term, the Defendant must plead the same Term, if Rules are given in Time. If it be a Country Cause, the Defendant may plead at any Time in the Term; but if the Cause be laid in *London* or *Middlesex*, the Defendant must plead before the Rules to plead are out. *When to plead.*

If the Defendant pleads, you make up the Record, sue out your *Venire*, *Distringas* and *Subpœna*'s, making them returnable on a general Return-Day, *wheresoever*, (&c.) as is before directed. *Venire. Distringas. Subpœna.*

You sign these Writs with the same Filacer, but you enter your Proceedings with Mr. *Lancetrow*; seal your Record at the *Nisi Prius* Office in *Grays Inn*; draw your *Breviats*; fee your Counsel; summon your Witnesses, and proceed to Trial. *Entering Proceedings. Record. Breviats.*

And if there be a Verdict against the Defendant, you must give a Rule upon the *Postea*; then stamp and enter it, and sign your Judgment with the Secondary, who will tax your Costs; then sue out your Writ of Execution, making it returnable, as others, on a general Return-Day, *wheresoever*, &c. *Rule upon Postea. Judgment. Execution.*

Observe, that if the Defendant pleads specially, the Plaintiff's Attorney hath the Liberty of making up the special Pleadings himself, without

King's
Bench.

without applying to the Clerk of the Papers for that Purpose.

Oyer of Original.

But *Note*; That the Court will not grant Oyer of any Original, unless Oyer is demanded within four Days after the Rule to plead is given.

Inquiry.

If the Defendant does not plead, but lets Judgment go by Default against him, you proceed in the usual Manner to execute a Writ of Inquiry in the following Form:

Writ of Inquiry.

GEORGE the Second, (&c.) To the Sheriffs of London, Greeting: **Whereas** C. D. late of, (&c.) was attached to be in our Court before us, of a Plea, &c. (*as in the Declaration*) to the Damage of the said A. — Pounds, as it is said: **AND** such, &c. (*as before in the King's Bench, only you make the Writ returnable on a general Return-Day, wheresoever, &c. and after (that Inquisition) say, You shall take, send, together with this Writ. Witness, &c.*

In this Method of Proceeding by Original Writ, a Writ of *Error* cannot be brought, or at least returnable, but when the Parliament is sitting.

Outlawry.

Outlawry.

Of proceeding by Original to the Outlawry.

YOU may proceed in Trespass, and Trespass upon the Case, but not in Debt or Covenant; which is thus: You must draw up your Instructions for the Original, according to your Case, and carry it to the Curfitor of the County, where you will try the Action. If you carry it within the first Week of the Term, then the Original will be returnable the first Day of the next preceding Term; but you must take Care that your Action did arise so long since, so as not to date the Original before the Cause of Action.

Then carry your Original to the Filacer of the County (who will make you out *Capias*, *Alias & Pluries*,) if you proceed to Outlawry, each of which must be fifteen Days between the Date and the Return, you return them *Non est inventus* of Course, and file them with the *Custos Brevium*, and the same Filacer will make you out an Exigent and Proclamation, which are made returnable after five County-Courts, (which are held but once in four Weeks,) if the Action be laid in the Country.

But if it be laid in *London*, six Weeks Time will serve, because the Hustings are held every Fortnight. The Filacer of *London* and *Middlesex* will of Course make you out the *Capias*, *Alias* and *Pluries*, and get them returned

King's
Bench.

* He also files
Warrants of
Attorney for
you.

† In London
you file it
with the Filacer.

turned and * filed himself, and will likewise make out for you the Exigent and Proclamation. You seal the Exigent, and carry it to one of the Compters to be perfected, and the Proclamation being sealed, you send it down to the Sheriff of the County, of which the Defendant is named, to be executed. When the Proclamation is returned, you should † file it with the *Custos Brevium*, and your Exigent being also returned, you carry it to the Clerk of the Outlawries, who will make you out a *Capias Utlagatum*, either general or special, the one is against the Body only, the other against Body, Lands and Goods.

If there be not five County-Days between the Teste and Return of the Exigent, you may procure an *Allocatur* from the Exigenter, to bring in the five County-Days; and so in London, if a Hustings be wanting.

If the Defendant appears on the Exigent, and supercedes the Outlawry, wherein having entered an Appearance by Attorney with the Filacer, the Plaintiff is to declare against him, and deliver the Defendant's Attorney a Copy of the Declaration, to which the Defendant, if Rules are given in Time, must plead the same Term; and if there be special Pleadings, the Plaintiff's Attorney has the Privilege of making up the Paper-Book, &c.

See more concerning the Method of appearing to and superseding the Exigent, and reversing the Outlawry in the Common Pleas.

A Jurata upon a Writ of Scire Facias.

— The same Day is given to the Parties aforesaid there, &c. At which Day before the Lord the King at *Westminster* comes the Parties aforesaid by their Attornies aforesaid; and the Sheriff, to wit, *A. B.* returned the Writ of the Lord the King of *Venire Facias*, directed to him in Form aforesaid, served and executed in all Things, together with the Panel of the Names of the Jurors annexed to the same Writ; of whom none, &c. Therefore the said Sheriff is commanded, that he distrain the Jurors aforesaid by all their Lands, &c. And that of the Issues, (&c.) so that he may have their Bodies before the Lord the King in fifteen Days from the Day of *Easter*, wheresoever, &c. or before the Justices of the Lord the King, assigned to hold the Assizes in the County of *S.* if before that Time, to wit, *Thursday* the — Day of — at — by Form of the Statute, &c. they come for Defect of Jurors, &c. The same Day is given to the Parties aforesaid there, &c. And be it known, &c. (*as before in other Jurata's.*)

Upon an Original.

— *J.* The Jurors between *D. E.* Plaintiff and *A. B.* late of *C.* in the County aforesaid, Yeoman, of a Plea of Trespass upon the Case, is respited before the Lord the King until in three Weeks from the Day of *St. Michael*,

Jurata.

chael, wheresoever, &c. unless the Justices of the Lord the King, assigned to hold the Assizes in the County aforesaid, &c. (*as in others.*) The same Day is given to the Parties aforesaid, &c. And be it known, &c. (*as in others, see before.*)

Note; The Day in Bank must be on a Return-Day, but the Day of Trial on a Day certain, as *Thursday* the fourteenth Day of *September*, &c.

Upon an Audita Querela.

— *J. The Jury* between *A. B.* by his Attorney Plaintiff, and *C. D.* to take Knowledge, whether Administration of all the Goods and Chattels, Rights and Credits, which were *E. F.*'s deceased, was committed to *G. H.* or not, is respited before the Lord the King until fifteen Days from the Day of *Easter*, wheresoever, &c. or before the Justices, &c. (*as before.*)

If in London, say,

— Wheresoever, &c. unless *Sir Will. Lee*, Knt. Chief Justice of the Lord the King, assigned to hold Pleas in the Court of the said Lord the King before the King himself, shall come before, &c. (*as before, upon the like Jurata.*)

*Upon a Writ of Error brought, and
Issue.*

L. to wit, The Jury between A. B. late of, (&c.) by his Attorney Plaintiff, and C. D. Gent. to recognise upon their Oaths, whether the aforesaid A. B. at the Time of giving the Judgment aforesaid against the same A. B. at the Suit of the aforesaid C. to wit, on Friday next after the Morrow of the Holy Trinity in the Year 1732, and in the ——— Year of the Reign of the said Lord the King, was under the Age of twenty-one Years, or not, is respited, (&c.)

*When the Sheriff is a Party to the Record, say
at the later End,*

——— Is delivered of Record to the Coroners of the County aforesaid in Form of Law to be executed at their Peril, &c.

Where the Plaintiff's or Defendant's Addition in the Beginning of the Record is Esquire, *changed.* and the Conclusion is Knight, then in the *Jurata* say, *lately Esquire, now Knight*, and so of other Titles.

I have seen a Precedent for a Jurata upon a Scire Facias thus :

*S. ff. The Jury between A. B. in his proper Person Plaintiff, and C. D. of a Plea
of*

King's
Bench.

of Debt; wherefore the *Scire Facias* is put in Respite. — *But others said it must be as is before mentioned, and shewed a Jurat' upon Record in the same Term.*

Proceedings on Audita Querela's.

Where it lies.

A *Udita Querela* lies where one is bound in a Statute or Recognizance, or against whom a Judgment in Debt is given, and the Body taken in Execution: If the Party so in Execution hath a Release or other Matter pleadable to discharge him, but has no Day given in Court to plead it, he may have his Writ against him that recovered, or against his Executors. And generally it lies only in such Cases where the Party in Execution has no other Remedy. *See the Form of the Writ in the Register or in F. N. B.*

It lies where an Action of Debt is brought on a Judgment, and a Judgment is obtained thereon, and the first Judgment is reversed on a Writ of Error.

Also for Bail after Judgment against them, the Judgment against the Principal being reversed or satisfied.

If an Action be brought against *A.* for a Trespass committed by him together with *B.* and Judgment be obtained thereupon; and afterwards the Plaintiff releases *B.* an *Audita Querela* lies for *A.*

It lies for a Defendant set at large by Plaintiff King's after being charged in Execution, and taken Bench. again upon the same; for the Execution being discharged supposes a Satisfaction.

Also for a Defendant after a Verdict for the Plaintiff in Trespass, and Damages assessed, where before the Day in Bank the Plaintiff releases to the Defendant all Actions and Demands, and afterwards prays Judgment, and sues Execution thereupon.

It lies not after a Judgment upon a Matter *Where it does* which might have been pleaded before; but *not lie.* where the Party was condemned, and had no Day in Court to plead it, it lies.

Defendant having Matter which might have been pleaded to a *Scire Facias*, and having lost the Benefit of that by an Award of Execution upon a *Scire Feci* returned, he is estopped for ever, and can never take the Advantage of that Matter; but he may have Relief by *Audita Querela* after two *Nichils* returned; or the Court will save him that Trouble, and relieve him upon Motion, unless the Foundation of the *Audita Querela* be a Release, or some such Matter of Fact as may be proper to be tried.

To sue out this Writ of *Audita Querela* *Of suing out* you must make a *Pracipe* according to your *the Writ of* Case, and carry it to the Cursitor, who will *Audita querela.* make out the Writ, and get it sealed.

Then get it allowed, which (by *Reg. Cur. Allowing it.* *Trin. 9 Jac. 1.*) must be in open Court, by Motion: Then the Secondary indorses the *Allocatur* upon it, for which you pay 2 s.

Audita Querela.

King's
Bench.
Audita Querela no Supersedeas.

An *Audita Querela* is no *Supersedeas*, and therefore Execution may be taken out, unless a *Supersedeas* be sued out.

If the *Audita Querela* be founded upon a Deed, it must be proved in Court and sufficient Bail put in, before a *Supersedeas* will be granted, which is by Motion in Court; but if it is not founded on a Deed, you cannot have a *Supersedeas*.

Bail in Audita Querela.

One charged in Execution may be bailed on an *Audita Querela*, but must procure four Persons to become Bail for him, who undertake that the Plaintiff in *Audita Querela* shall pay the Money, or the Bail will pay it for him, and not to render the Body or pay, &c.

And by *Reg. Cur. Trin. 9 Jac. 1.* it must be taken in open Court on Motion.

A Bail-

A Bail-piece on an Audita Querela.

— Term in the — Year of the Reign of
King George the 2d.

Marsh. to wit,

C. D. of— is delivered on Bail (to prosecute with Effect a Writ of Audita Querela brought by him to be discharged of and from a Judgment given against him in the Court of our Lord the King, before the King himself, at the Suit of one A. B. for — l. Debt, and for Damages, Costs and Charges,) to

J. P.
Attorney.

E. F. of — in —	Gent.
G. H. of —	Yeoman.
J. K. of —	Draper.
L. M. of —	Grocer.

King's
Bench.
*Process in Au-
dita Querela.*

The Process upon an *Audita Querela*, if it be founded upon a Record, or the Party be in Custody, is a *Scire Facias*; but if grounded on a Matter of Fact, or the Party be not in Custody, and only brought *Quia Timet*, the Process is a *Venire* and Distress infinite, which Writs are returnable, *wheresoever*, &c. and not at a Day certain, upon which you should give Notice to the adverse Party if you can; otherwise get two *Nihils* returned, and enter a Rule thereupon, by which the Court will proceed to Judgment, *viz. Quod Querens in Iudicio nullam habebit Executionem Iudicii sui.*

*Of filing Writ.
Entring Pro-
ceedings.*

Then file the Writ of *Audita Querela* with the *Custos Brevium*, and enter all the Proceedings on the Roll, and mark the Judgment by writing under it a Memorandum, and that such a Term and Roll the said Judgment was vacated to prevent any Execution thereupon.

*What to do
when Defen-
dant pleads.*

If the Defendant appears and pleads, make up the Record and go to Trial, as in other Cases. And you may lay your Deed on which you ground your Writ, to be made in that County where you intend to try the Cause, it being now allowed to be *transitory*, tho' formerly always held local.

*See before p. for a Jurata on an Au-
dita Querela.*

Entry

King's
Bench.

Entry of the Surmise and Recognition on a Writ of Audita Querela.

OUR Lord the King hath given in Charge to his Justices, assigned to hold Pleas before the King himself, his Writ closed in these Words, (*to wit*) George the 2d, &c. (*reciting the whole Writ of Audita Querela.*)

Afterwards, to wit, on the — Day of — in this same Term, before our Lord the King at *Westminster* the said C. D. comes in his proper Person, being brought to the Bar here under the Custody of — Esq; Marshal of the *Marshalsea* of our Lord the King, and says that he ought not to be further detained in the said Prison by Pretence of the said Execution, because he says that after the said Judgment was given against him the said C. D. at the Suit of the said A. B. for the Debt and Damages aforesaid, he the said C. D. on the — Day of — in the — Year of the Reign of our said Sovereign Lord George the 2d, now King of *Great Britain*, &c. in the Court of the said Lord the King before the King himself, (the said Court being then at *Westminster* in the County of *Middlesex*) rendered himself to the Prison of the Marshal of the *Marshalsea* of our said Lord the King for the said Debt and Damages; and he the said C. D. then and there present in the said Court, was by the said Court of our said Lord the King committed to the Custody of — then Marshal of the *Marshalsea* of our said Lord the King

Defendant brought in Custody to the Bar of the Court.

Surmises that he rendered himself.

And was committed into the Custody of the King Marshal.

King's
Bench.

Voluntary E-
scape by the
Marshal.

Award of
Scire Facias.

King before the King himself, in Execution for the said Debt and Damages, there to remain until the said *A. B.* should be fully satisfied of the Debt and Damages: **And afterwards,** (to wit) on the ——— Day of ——— then next ensuing the said ——— (*the Marshal*) permitted him the said *C. D.* being in Prison in Execution for the said Debt and Damages as aforesaid, to escape out of the said Prison, and to go at large; whereby the said *C. D.* was discharged from the said Execution; and the said *C. D.* being discharged from the said Execution in Form aforesaid; the said *A. B.* afterwards, to wit, on the ——— Day of ——— in the Year aforesaid, at *B.* in the County aforesaid, caused him the said *A. B.* to be taken by Pretence of the said Judgment, and to be committed to the Custody of the Marshal of the *Marshalsea* of our said Lord the King, in Execution for the said Debt and Damages; And the said *A. B.* prays that he may be discharged from the said Prison, and of the said Debt and Damages, &c. **But because** it is unknown to our Court before us, whether the Allegation of the said *C. D.* be true or no, the Sheriff is commanded, that by good and lawful Men, &c. he make known to the said *T. H.* that he be before our Lord the King in fifteen Days from the Day of *Easter*, wheresoever he shall then be in *England*, to shew, if any Thing he has for himself, or knows to say, why the said *C. D.* ought not to be discharged and delivered from the said Prison, and of the said Debt and Damages, &c. and further to do and receive what, &c. The same Day is given to the said *C. D.* &c. **And upon**
this

this came *E.* and *B.* Bail in their proper Persons, and became Bail for the said *C. D.* to have his Body before our Lord the King at the same Time, &c. and so from Day to Day, until, &c. each of the said Bail under the Penalty of — *l.* which said Sums the said Bail acknowledged, and each of them by himself acknowledged to be made of their and each of their Lands and Chattels, and to be levied to the Use of the said *A. B.* if it should happen that the said *C. D.* should not personally appear on the Premisses at any Day appointed, or to be appointed for him by the Court of our Lord the King now here, or should not prosecute his said Writ with Effect; or if it happen that Judgment be given for the said *A. B.* against the said *C. D.* &c. he do not render himself on that Occasion to the Prison of the Marshal of the *Marshalsea* of our said Lord the King before the King himself, &c. or do not pay the said — *l.* to the said *A. B.* And be it known that the Writ of our Lord the King in this same Term before our said Lord the King at *Westminster* is delivered of Record to the Under-Sheriff of the County of *Middlesex*, present here in Court to be executed in Form of Law, &c. At which Day before our Lord the King at *Westminster* the said *C. D.* comes in his proper Person; and the Sheriff returned, that he had made known to the said *A. B.* by *J. D.* and *J. F.* good, &c. which said *A. B.* according to the Notice given him in this Behalf, on the fourth Day of the Plea, being solemnly required, also comes in his proper Person, and thereupon prays a Day to imparle; and it is granted to him, &c. And upon this a

King's
Bench.
Bail.

Scire Feci re-
turned.

Audita Querela.

Day is given to the said Parties to be before our Lord the King, on the Morrow of the *Holy Trinity*, wheresoever, &c. to wit, to the said *A. B.* to imparle, and then to answer, &c. And upon this came, &c. and became Bail to have the Body of the said *C. D.* before our Lord the King on the said Morrow of the *Holy Trinity*, wheresoever, &c. and so from Day to Day until, &c. each of the said Bail Body for Body, &c.

The Entry of a Recognizance in another Manner.

AND hereupon before our Lord the King at *Westminster* comes *E. F. G. H. I. K.* and *L. M.* in their proper Persons, and become Bail to have the Body of the said *C. D.* before the Lord the King at the same Time, and so from Day to Day, until, &c. and that the said *C. D.* shall prosecute his said Writ of *Audita Querela* with Effect, each of the said Bail under the Penalty of the Condemnations aforesaid; and further if it happens that Judgment be thereupon given against the said *C. D.* then the said Manucaptors grant, and each of them for himself grants, that the said several Debts and Damages be made of their and each of their Lands and Chattels, and be levied to the Use of the said *A. B.* if it happen that the said *C. D.* does not satisfy him the said several Debts and Damages.

Judgment

Judgment after a Verdict on a Trial ^{King's Bench.}
at Bar.

From which Day the said Jury between the said Parties in the aforesaid Plea were thereupon respited between them before the Lord the King until the Morrow of the *Holy Trinity* then next ensuing, wherefore, &c. for Default of the Jurors, &c. On which Morrow of the *Holy Trinity*, before our Lord the King at *Westminster* comes as well the said *C.D.* in his proper Person as the said *A.B.* by his Attorney aforesaid; and the Jurors of the said Jury being required likewise come, who to say the Truth of and upon the Premises being chosen, tried, and sworn, say upon their Oaths, that the said *L.M.* Esq; late Sheriff of the County of *B.* permitted the said *C.D.* to escape and go at large out of the said Prison in Manner and Form as the said *C.D.* in his Discharge of the said Execution has alledged: **Therefore** it is considered, that the said *A.* be intirely barred from all Executions whatsoever by Pretence of the said Recovery, and that the said *C.D.* be discharged from the said Execution, &c.

Another.

Therefore it is considered that the said Plaintiff be discharged from the Execution of the said Debt and Damages, and be delivered out of the Prison in which he is so detained on that Account, &c.

Another.

King's
Bench.

Another.

Therefore it is considered, that the said *A.* have no further Execution against the said *C.* or against any of the Lands, Tenements, Goods, or Chattels of the said *C.* by Pretence of the said Recognizance; And that the said *A.* be intirely barred from having any Execution thereupon by Pretence of the said Recognizance; and the said *C.* and all his Lands, Tenements, Goods and Chattels be intirely discharged from such Execution, &c.

Costs.

No Damages or Costs are given to the Plain- in *Audita Querela.* *Vide Dyer 194.*

Restitution.

Whether Plaintiff on Recovery in *Audita Querela* shall have Restitution, *vid. 1 Sid. 74. pl. 4. 1 Kebl. 245. pl. 4. 260. pl. 39.*

The Plaintiff in *Audita Querela* when non-suited may have a new Writ of *Audita Quere- Superfedeas. la*, but no *Superfedeas* to stay Execution.

Select

select PRECEDENTS of De-
 clarations and Pleadings in
 the Court of *King's Bench*
 and *Common Pleas*.

*Declaration on an Agreement made
 upon an Assignment, at the Suit
 of an Administrator, during the
 Minority of his Wife.*

Middlesex, to wit, JOHN Bligh, Esq; Ad-
 ministrator of the Goods
 and Chattels, Rights and Credits, which were of
Edward, Lord Cornbury, with his Will annexed,
 during the Minority of *Theodosia* the Wife of him
 the said *John*, complains of *James Anderson*,
 Gentleman, in Custody of the Marshal, &c. for
 that, to wit, That whereas the aforesaid *James*,
 on the fourth Day of *November* in the Year
 of our Lord One thousand seven hundred
 and twenty-six, at *Westminster* in the County
 aforesaid, in Consideration that the aforesaid
Edward, Lord Cornbury, in his Life-time, at
 the special Instance and Request of the afore-
 said *James*, by a certain Writing under the
 Hand of the said *Edward, Lord Cornbury*, (as
 much as in him lay,) had assigned to the
 aforesaid *James*, a certain Debt of Eight
 hundred and sixteen Pounds, due to the
 same

Declarations in Case.

same *Edward Lord Cornbury* from one *Andrew Cumpsty*, assumed upon himself, and then and there faithfully promised the same *Edward Lord Cornbury*, that he the aforesaid *James* would pay to the aforesaid *Edward Lord Cornbury* One Hundred and seven Pounds on the twenty-fourth Day of *June* in the Year of our Lord One thousand seven hundred and twenty-seven, and other One hundred and seven Pounds on the twenty-fourth Day of *June* in the Year of our Lord One thousand seven hundred and twenty-eight: And although the aforesaid *James* after the making of his Promise aforesaid, to wit, on the twenty-fourth Day of *June* in the Year of our Lord One thousand seven hundred and twenty-seven, paid to the aforesaid *Edward Lord Cornbury* the first of the aforesaid two Sums of One hundred and seven Pounds, according to his Promise aforesaid thereof: Yet the aforesaid *James* his Promise and Assumption aforesaid, as to the Sum of One hundred and seven Pounds last above-mentioned to be payable on the twenty-fourth Day of *June* in the Year of our Lord One thousand seven hundred and twenty-eight as aforesaid, little regarding, but contriving and fraudulently intending the aforesaid *Edward Lord Cornbury* in his Life-time, and him *John* after the Death of the aforesaid *Edward Lord Cornbury*, in this Behalf craftily and subtilly to deceive and defraud, hath not paid, or any Ways satisfied the said Sum of One hundred and seven Pounds, payable on the aforesaid twenty-fourth Day of *June* in the Year of our Lord One thousand seven hundred and
twenty-

twenty-eight as aforesaid, or any Penny there- King's
of, to the aforesaid *Edward Lord Cornbury* in Bench.
his Life-time, or to the same *John* (after the
Death of him *Edward Lord Cornbury*) to whom
Administation of all the Goods and Chattels
which were the aforesaid *Edward Lord Corn-*
bury's at the Time of his Death, with his Will
annexed, during the Minority of the aforesaid
Theodosia, who still is under Age, by *Thomas*
of Divine Providence Archbishop of *Canter-*
bury, Primate and Metropolitan of all *Eng-*
land, on the twenty-third Day of *November*
in the Year of our Lord One thousand seven
hundred and twenty-seven, at *Westminster*
aforesaid in due Manner was committed, but
hath refused, and still doth refuse to pay him
the same, in Delay of Administation of the
Goods and Chattels aforesaid; wherefore he
saith, that he is the worse, and hath Damage
to the Value of Two hundred Pounds: And
therefore brings his Suit: And brings here
into Court the Letters of Administation of the
aforesaid Archbishop, which proves the Com-
mission of the Administation aforesaid in
Form aforesaid, &c.

Pledges of prosecuting, &c.

*Declaration on an Inland Bill of Ex-
change against the Acceptor.*

London, to wit, **T** *Thomas Huckell* the youn- No Time of
ger complains of *Thomas Payment in*
Pritchard in the Custody of the Marshal, &c. the Bill.
for that to wit, That whereas on the twenty-
eighth

King's
Bench.

eighth Day of *June* in the Year of our Lord One thousand seven hundred and twenty-seven, at *London* in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheap*, one *Cary Weekes* according to the Custom of Merchants made his certain Bill of *Exchange*, bearing Date the same Day and Year, directed to the aforesaid *Thomas Pritchard*, and thereby required the same *Thomas Pritchard* to pay to the aforesaid *Thomas Huckell*, by the Name of *Thomas Huckell*, Junior, or Order, the Sum of fourteen Pounds, Value received, and place it to the Account of the same *Cary Weekes*; of which said Bill of Exchange the aforesaid *Thomas Pritchard* afterwards, to wit, the thirtieth Day of *July* in the Year of our Lord aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, had Notice and Sight, and then and there accepted it according to the Tenor of the Bill aforesaid; and by Reason thereof he the said *Thomas Pritchard* became liable to pay to the same *Thomas Huckell* the aforesaid fourteen Pounds in the same Bill of Exchange mentioned, according to the Tenor and Effect of the same Bill; and being so liable the aforesaid *Thomas Pritchard* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, in Consideration thereof assumed upon himself, and to the same *Thomas Huckell* then and there faithfully promised, that he the said *Thomas Pritchard* would well and truly pay and satisfy to the same *Thomas Huckell* the same fourteen Pounds, according to the Tenor and Effect of the same Bill: And whereas also

Another Bill.

afterwards, to wit, the twenty-eighth Day of ^{King's} June in the Year of our Lord last aboveſaid, ^{Bench.} at *London* aforeſaid in the Pariſh and Ward aforeſaid, the aforeſaid *Cary Weeks*, according to the aforeſaid Uſe and Cuſtom of Merchants, hath made his one other Bill of Exchange, bearing Date the ſame Day and Year, directed to the aforeſaid *Thomas Pritchard*, and hath thereby required the ſame *Thomas Pritchard* to pay to the aforeſaid *Thomas Huckell*, by the Name of *Thomas Huckell*, Junior, or Order, another Sum of fourteen Pounds, Value received, and place it to the Account of the ſame *Cary Weekes*; of which ſaid Bill of Exchange laſt mentioned the aforeſaid *Thomas Pritchard* afterwards, to wit, the aforeſaid thirtieth Day of *July* in the Year of our Lord aboveſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, had Notice and Sight; and the aforeſaid laſt mentioned fourteen Pounds in the aforeſaid laſt mentioned Bill contained then and there promiſed to pay to the ſame *Thomas Huckell* within two Months from thence next following; and by Reason thereof, and by the Cuſtom of Merchants uſed and approved of from the Time whereof the Memory of Man is not to the contrary, the aforeſaid *Thomas Pritchard* became charged to pay to the ſame *Thomas Huckell* the aforeſaid laſt mentioned fourteen Pounds, according to that Promiſe; and being ſo thereof charged the aforeſaid *Thomas Pritchard* afterwards, to wit, the ſame Day and Year laſt aboveſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, in Conſideration thereof aſſumed upon himſelf, and

King's
Bench.

*Money had
and received.*

to the same *Thomas Huckell* then and there faithfully promised, that he the said *Thomas Pritchard* the same fourteen Pounds to the same *Thomas Huckell* within two Months then next following would well and truly pay and satisfy. And whereas also the aforesaid *Thomas Pritchard*, the same Day and Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, was indebted to the same *Thomas Huckell* in other fourteen Pounds of lawful Money of *Great Britain*, for the like Sum of Money by the aforesaid *Thomas Pritchard* to the Use of the said *Thomas Huckell* before that Time had and received; and being so thereof indebted the aforesaid *Thomas Pritchard* afterwards, to wit, the same Day and Year last aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, in Consideration thereof assumed upon himself, and to the same *Thomas Huckell* then and there faithfully promised, that he, the aforesaid *Thomas Pritchard*, the same Fourteen Pounds last mentioned to the same *Thomas Huckell* would well and truly pay and content, when he should be thereunto afterwards required. Nevertheless, the aforesaid *Thomas Pritchard* his several Promises and Assumptions aforesaid not in the least regarding, but contriving and fraudulently intending the said *Thomas Huckell* in this Behalf craftily and subtilly to deceive and defraud, the aforesaid several Sums of Money, or any Part thereof, to the same *Thomas Huckell* hath not paid, or any Ways contented for the same; (altho' the aforesaid *Thomas Pritchard*, by him *Thomas Huckell*, on the first Day of *October* in the Year of our Lord One thousand seven hundred

dred and twenty-seven abovesaid, and often King's
afterwards at *London* abovesaid in the Parish Bench.
and Ward abovesaid hath been required so to
do;) but hath hitherto altogether refused, and
still doth refuse to pay him, or any ways con-
tent him for the same, to the Damage of the
said *Thomas Huckell* of thirty Pounds; And
therefore brings his Suit.

Pledges of prosecuting, &c.

And the abovesaid *Thomas Pritchard* by
Thomas Hand his Attorney comes and defends
the Force and Injury when and where, and as
this Court shall think fit, and saith, That the *Sham Plea:*
abovesaid *Thomas Huckell* ought not to have his
Action abovesaid thereof against him, because he
saith, that well and true it is, that he assumed
upon himself in Manner and Form, as the
abovesaid *Thomas Huckell* against him by his
Declaration abovesaid above hath supposed.
But the same *Thomas Pritchard* further saith,
That after the making of the several Promises
and Assumptions abovesaid, above supposed to
be made, to wit, on the twelfth Day of *March*
in the Year abovesaid, he, the same *Thomas*
Pritchard, at *London* abovesaid in the Parish of
the *Blessed Mary of the Arches* in the Ward
of *Cheap*, gave and delivered to the abovesaid
Thomas Huckell ten Hogsheads of *Claret*, in
full Satisfaction and Discharge of the several
Promises and Assumptions abovesaid, and of all
Money in the same mentioned; which said ten
Hogsheads of *Claret* the abovesaid *Thomas*
Huckell then and there, in full Satisfaction and
Discharge of the several Promises and Assump-
tions abovesaid, and of all Money in the same

King's
Bench.

mentioned, of the same *Thomas Pritchard* had and received; and this he is ready to justify: Wherefore he prays Judgment, if the aforesaid *Thomas Huckell* ought to have or maintain his Action aforesaid thereof against him, &c.

Replication.

And the aforesaid *Thomas Huckell* saith, That he, for any Thing by the aforesaid *Thomas Pritchard* above in Pleading alledged, ought not to be precluded from having his Action aforesaid thereof against him, because by protesting that the aforesaid *Thomas Pritchard* hath not given or delivered to the same *Thomas Huckell* the aforesaid ten Hogsheds of Claret, in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all Money in the same mentioned, in Manner and Form as the aforesaid *Thomas Pritchard* above in Pleading hath alledged, For Plea the same *Thomas Huckell* saith, That he the aforesaid *Thomas Huckell* hath not had or received of the same *Thomas Pritchard* the aforesaid ten Hogsheds of Claret, in full Satisfaction and Discharge of the several Promises and Assumptions aforesaid, and of all the Money in the same mentioned, in Manner and Form so as the aforesaid *Thomas Pritchard* thereof in Pleading hath alledged; and prays that this may be inquired by the Country; and the aforesaid *Thomas Pritchard* thereof likewise, &c. Therefore let a Jury come thereupon before the Lord the King at *Westminster* on *Wednesday* next after three Weeks of *St. Michael*; and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid there, &c.

Declaration

Declaration for not delivering of Loading.

London, to wit, **S**amuel Ximenes complains
of John Moram in Custody of the Marshal, &c. for that to wit, that whereas the aforesaid John Moram, on the ninth Day of September in the Year of our Lord One thousand seven hundred and twenty-eight, at Lisbon, in Parts beyond the Seas, had received in and upon a certain Ship, called the *Sarah*, whereof the aforesaid John Moram was then Master, bound on a Voyage from Lisbon aforesaid to Amsterdam, in good Order and well conditioned, divers Goods and Merchandizes of him Samuel, to wit, three Bags, containing in them three hundred and twenty-five Pieces of Gold, called Moidores, to the Value of four hundred forty and six Pounds, of lawful Money of this Kingdom, to be transported by him John in the Ship aforesaid, from Lisbon aforesaid unto Amsterdam, and to the aforesaid Samuel, or his Assigns, to be there delivered, for a certain Hire by the aforesaid Samuel to the same John to be paid thereupon; he, the aforesaid John, in Consideration thereof afterwards, to wit, the same Day and Year abovesaid, at London aforesaid, to wit, in the Parish of the Blessed Mary of the Arches in the Ward of Cheap, assumed upon himself, and then and there faithfully promised the same Samuel, that he, the aforesaid John, would carry and transport for the same Samuel the Goods and Merchandizes

Declarations in Case.

chandizes aforeſaid from *Lisbon* aforeſaid to *Amſterdam* aforeſaid, and the ſame Goods and Merchandizes to the ſame *Samuel*, or his Aſſigns, at *Amſterdam* aforeſaid, would ſafely and ſecurely deliver, (the Dangers of the Seas only excepted); And the ſame *Samuel* avers, That he, the aforeſaid *John*, after making his Promiſes and Aſſumptions aforeſaid, to wit, on the ninth Day of *October* in the Year of our Lord laſt aforeſaid, at *Amſterdam* aforeſaid from *Lisbon* aforeſaid ſafely arrived with the three Bags aforeſaid, and with the aforeſaid three hundred and twenty-five Pieces of Gold; And although the ſame *Samuel*, from the Time of making his Promiſes and Aſſumption aforeſaid, was always ready, and ſtill is ready to pay to the ſame *John* the Hire agreed between them, for the transporting of the Goods and Merchandizes aforeſaid; nevertheless the aforeſaid *John* his Promiſes and Aſſumptions aforeſaid, in Form aforeſaid made, not regarding, but contriving and fraudulently intending the ſame *Samuel* in this Behalf craftily and ſubtilly to deceive and defraud, hath not delivered the aforeſaid Bags, and the aforeſaid Three hundred and twenty-five Pieces of Gold, called *Moidores*, or any Part thereof, to the ſame *Samuel*, according to his Promiſes and Aſſumptions aforeſaid, although the ſame *John* afterwards, to wit, the ſame Day and Year laſt aforeſaid, at *London* aforeſaid in the Pariſh and Ward aforeſaid, by the ſame *Samuel* was required ſo to do; but he hath hitherto altogether reſuſed, and ſtill doth reſuſe to deliver them to the ſame *Samuel*:
Where-

Wherefore the same *Samuel* saith, that he is King's the worse, and hath Damage to the Value of Bench nine Hundred Pounds; and therefore brings his Suit, &c.

Pledges of prosecuting, &c.

Against a Warehouse-keeper, for Goods lost.

London, to wit, **J**oseph Parry complains of *Daniel Davies* and *James Powell* in the Custody of the Marshal, &c for that, to wit, that whereas the aforesaid *Daniel* and *James*, on the first Day of *February* in the fourth Year of the Reign of the Lord *George*, now King of *Great Britain*, &c. at *London* in the Parish of the *Blessed Mary of the Arches* in the Ward of *Cheap*, (in Consideration that the same *Joseph*, at the special Instance and Request of them the said *Daniel* and *James*, before that Time had delivered to the same *Daniel* and *James* divers Goods, Wares and Merchandizes of him the said *Joseph*, to the Value of forty Pounds, by them the said *Daniel* and *James* to be sold and disposed of for the said *Joseph*, and to give and deliver a true Account of the same Goods, Wares and Merchandizes, and also of the Profit of them, to the aforesaid *Joseph*.) assumed upon themselves, and then and there faithfully promised the same *Joseph*, that they, the aforesaid *Daniel* and *James*, would well and truly give and deliver to him, the aforesaid *Joseph*, a true Account of the same Goods, Wares and Merchandizes, or the Produce of the same, when

King's
Bench.

thereto afterwards they should be required: **And** although the same *Daniel* and *James* afterwards, to wit, the same Day and Year abovesaid, had sold the same Goods, Wares, and Merchandizes, and disposed of the same, and thereof made great Profit: Nevertheless the same *Daniel* and *James* their Promises and Assumptions aforesaid no way regarding, but contriving and fraudulently intending the same *Joseph*, in this Behalf, craftily and subtilly to deceive and defraud, have not at any Time hitherto to the same *Joseph* given or delivered, nor hath either of them given or delivered any true Account of the same Goods, Wares, and Merchandizes, or of the Produce of them, (although the aforesaid *Daniel* and *James* afterwards, to wit, on the second Day of *February* in the Year abovesaid, and often afterwards by the same *Joseph* at *London* aforesaid in the Parish and Ward aforesaid, were required so to do,) but they have hitherto absolutely refused, and still do refuse to give or deliver that Account to the aforesaid *Joseph*. **And whereas** the aforesaid *Daniel* and *James* afterwards, to wit, on the third Day of *February* in the Year abovesaid, at *London* aforesaid, in the Parish and Ward aforesaid, (in Consideration that the aforesaid *Joseph*, at the like Instance and Request of them the said *Daniel* and *James*, had before that Time delivered to the same *Daniel* and *James* five Pieces of Woollen Cloth, to the Value of other forty Pounds,) assumed upon themselves, and then and there faithfully promised the same *Joseph*, that they, the aforesaid *Daniel* and *James*, would well and truly deliver to

to the same *Joseph* the same five Pieces of *King's*
 Woollen Cloth, or the Value thereof, when *Bench.*
 they should be thereto afterwards required,
 to the same *Joseph* would well and faithfully
 pay and satisfy: **But** the aforesaid *Daniel*
 and *James* their Promise and Assumption last
 mentioned not regarding, but contriving and
 fraudulently intending the same *Joseph* in this
 Behalf craftily and subtilly to deceive and de-
 fraud, have not at any Time hitherto deli-
 vered, nor hath either of them delivered, to
 the same *Joseph* the aforesaid five Pieces of
 Woollen Cloth, nor have hitherto paid, or hath
 either of them paid, to the same *Joseph* the
 Value thereof, (although the same *Daniel* and
James afterwards, to wit, on the fourth
 Day of *Februury* in the fifth Year aforesaid,
 and often afterwards, by the same *Joseph*, at
London aforesaid in the Parish and Ward aforesaid, were required to deliver the same five
 Pieces of Woollen Cloth, or to pay the Va-
 lue thereof,) but they have hitherto intirely
 refused, and still do refuse, to deliver to the
 same *Joseph* the aforesaid five Pieces of Woollen
 Cloth, or to pay to the same *Joseph* the Value
 thereof: **And whereas also** the aforesaid
Daniel and *James* afterwards, to wit, on
 the first Day of *May* in the fifth Year aforesaid, at *London* aforesaid in the Parish and
 Ward aforesaid, were indebted to the same
Joseph in other forty Pounds of like Money *Money had*
 for the like Sum of Money by them the *and received.*
 said *Daniel* and *James* to the Use of him the
 said *Joseph* before that Time had and re-
 ceived; and being so thereof indebted they

Declarations in Case.

the same *Daniel* and *James*, in Consideration thereof afterwards, to wit, the Day and Year last abovesaid, at *London* abovesaid in the Parish and Ward abovesaid, assumed upon themselves, and then and there faithfully promised the same *Joseph*, that they the abovesaid *Daniel* and *James* would well and faithfully pay and content to the same *Joseph* the same forty Pounds last abovesaid, when they should be thereto afterwards requested: Yet the abovesaid *Daniel* and *James* no way regarding their Promises and Assumptions abovesaid in Form abovesaid made, but contriving and fraudulently intending the same *Joseph* in this Behalf craftily and subtilly to deceive and defraud, have not paid, nor hath either of them paid, to the same *Joseph* the abovesaid Sum of Money, or any Part thereof, (although the same *Daniel* and *James* afterwards, to wit, on the third Day of *May* in the — Year abovesaid, and often afterwards, by the same *Joseph*, at *London* abovesaid in the Parish and Ward abovesaid, were required so to do.) But they have hitherto, &c.

For not taking South-Sea Stock sold.

London; to wit, **B.** *J.* complains of *J. M.* in Custody of the Marshal, &c. for that, to wit, That whereas the abovesaid *Jacob*, on the — Day of *September* in the — Year of the Reign of the Lord the now King, at *London* abovesaid, to wit, in
the

the Parish of *St. Peter the Poor* in the Ward of *King's Broad-Street, London*, in Consideration that Bench. the aforesaid *Benjamin*, at the special Instance and Request of the same *Benjamin*, had taken upon himself, and the same Day and Year there faithfully promised the same *Jacob*, to transfer One thousand Pounds Capital Stock of the Governor and Company of Merchants of *Great Britain* trading to the *South-Seas* and other Parts of *America*, and for encouraging the Fishery, called *South-Sea Stock*, upon the twenty-first Day of *September* then next following, assumed upon himself, and then and there faithfully promised the same *Benjamin*, to pay to the same *Benjamin* 734 l. for every Hundred Pounds Capital Stock aforesaid, upon the Transfer of the same One thousand Pounds Capital Stock aforesaid: And the aforesaid *Benjamin* avers, that Capital Stock from the Time of making that Assumption and Promise was hitherto used to be transferred by the next Governor and Company aforesaid in the transfer Books of the Governors and Company aforesaid, with the Intent and to that Purpose being kept in a certain Room here in the said Parish and Ward, Part of a certain House, called the *South-Sea House*, when those Books were open; and that the Books aforesaid were open in the Room aforesaid in that House on the said twenty-first Day of *September* in the Year aforesaid, to wit, at Nine of the Clock in the Forenoon of the same Day, and from thence until One of the Clock in the afternoon of the same Day, at which Time those Books were there shut up; And that the aforesaid *Benjamin*, on the same

It would be necessary to lay the Venue in the Parish where the S. S. House is, by Reason of some Avenues afterwards to be made: And in Regard Books are kept in different Rooms, and Part of the House is in one Parish, and Part in another; let Care be taken that it be in the Parish in which the Rooms are where the Transfer-Books were kept.

twenty-

Declarations in Case.

twenty-first Day of *September*, immediately before that Time in which the Books aforesaid were so as aforesaid shut up, and for a convenient Time, to wit, for the Space of four Hours before the Time of shutting up thereof, in the Room aforesaid in the House aforesaid, offered to transfer to the same *Jacob* the same One thousand Pounds Capital Stock, and then and there requested the same *Jacob* to accept the same One thousand Pounds Capital Stock aforesaid; but the aforesaid *Jacob*, or any Person on his Behalf, did not accept, nor was ready to accept, the same One thousand Pounds Capital Stock aforesaid: **And whereas** also the aforesaid *Jacob* afterwards, to wit, on the said — Day of *September* in the Year aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, was indebted to the same *Benjamin* in other Seven hundred and thirty-four Pounds of like lawful Money of this Kingdom, for Goods and Chattels by him *Benjamin* to the same *Jacob*, and at the like Instance and Request of the same *Jacob*, before then sold and delivered: And being so thereof indebted the same *Jacob* in Consideration thereof afterwards, to wit, the same Day and Year, at *London* aforesaid in the Parish and Ward aforesaid, assumed upon himself, and then and there faithfully promised the same *Benjamin*, to pay him the same last mentioned Sum, when he should be afterwards thereto required: **Yet** the aforesaid *Jacob* in no wise regarding his several Promises and Assumptions aforesaid in Form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the same

same *Benjamin* in this Behalf, hath not paid, ^{King's} or caused to be paid, to the same *Benjamin* the ^{Bench.} aforefaid several Sums of Money, or any Part thereof, (although the same *Jacob* afterwards, to wit, the same twenty-first Day of *September* in the Year abovefaid, at *London* aforefaid in the Parish and Ward aforefaid, by the same *Benjamin* had been requested so to do,) but hath hitherto absolutely refused, and still doth refuse to pay the same to him, to the Damage of the said *Benjamin* Eight thousand Pounds: And thereupon he brings his Suit, &c.

For living in a House upon Sufferance.

Huntingdon, to wit, **R.** *H.* Gentleman, complains of *W. B.* in Custody of the Marshal, &c. for that, to wit, That **whereas** the aforefaid *William*, on the twenty-ninth Day of *September* in the Year of our Lord One thousand seven hundred and thirty-one, at *St. Neots* in the County of *Huntingdon* aforefaid, in Consideration that the aforefaid *R. H.* would suffer the aforefaid *William* to have, enjoy and occupy one Messuage with the Appurtenances of him the said *Richard*, situate and being in *St. Neots* in the County aforefaid, for a long Time then next following, to wit, so long as both Parties should please, assumed upon himself, and then and there faithfully promised the same *Richard*, to pay him so much Money as he thereupon should reasonably deserve: And the same *R.* avers, That he believing (or relying on) that Promise

Declarations in Case.

mise and Assumption of the said *William*, he the same *Richard* permitted the said *William*, at the said Instance of the said *William*, to have, enjoy and occupy: And that the same *William*, on that Permission of the said *Richard*, had enjoyed and occupied the Premisses aforesaid, with the Appurtenances, from thence, to wit, from the Feast of *St. Michael* the Archangel in the Year aforesaid, until to and in the Feast of *St. John* the Baptist in the Year of our Lord One thousand seven hundred and thirty-two: And that he the said *R.* avers, that he therefore reasonably deserved to have of the aforesaid *William* seven Pounds and ten Shillings, to wit, at *St. Neots* aforesaid in the County aforesaid, whereof the aforesaid *William* afterwards, to wit, on the twenty-sixth Day of *June* in the Year last aforesaid, had Notice: **And whereas also** the aforesaid *William* afterwards, to wit, the said twenty sixth Day of *June* in the Year of our Lord One thousand seven hundred and thirty-two aforesaid, at *St. Neots* aforesaid in the County aforesaid, in Consideration that the aforesaid *Richard*, at the like special Instance and Request of him *William*, had permitted him *William* to have, enjoy and occupy one Messuage, and the Benefit of one other Messuage, with the Appurtenances of him *Richard*, situate and being in *St. Neots* aforesaid in the County aforesaid, for a long Time, to wit, from the aforesaid Feast of *St. Michael* the Archangel in the Year of our Lord One thousand seven hundred and thirty-one, until to and in the aforesaid Feast of *St. John* the Baptist in the Year of our Lord One thousand seven hundred and

and thirty-two, assumed upon himself, and King's then and there faithfully promised the same Bench.

Richard, to pay him thereupon other seven Pounds and ten Shillings, when he should be thereunto afterwards requested: And whereas also the aforesaid *William* afterwards, to wit, the said twenty-sixth Day of *June* in the Year of our Lord One thousand seven hundred and thirty-two abovesaid, at *St. Neots* aforesaid in the County aforesaid, in Consideration that the aforesaid *Richard*, at the like Instance and Request of him the said *William*, had permitted him the said *William* to have, enjoy and occupy the Use and Benefit of one other Messuage, with the Appurtenances, of him the said *Richard*, situate and being at *St. Neots* aforesaid in the County aforesaid, for a long Time, to wit, for the Space of three Quarters of a Year then last past, assumed upon himself, and then and there faithfully promised the same *Richard*, to pay him so much Money as he reasonably deserved to have therefore: And the same *Richard* avers, that he therefore reasonably deserved to have of the same *William* other seven Pounds and ten Shillings, to wit, at *St. Neots* aforesaid in the County aforesaid, whereof the aforesaid *William* afterwards, to wit, the same Day and Year last abovesaid, had Notice: Yet the aforesaid *William*, no way regarding his several Promises and Assumptions aforesaid, but contriving and fraudulently intending the same *Richard* in this Behalf craftily and subtilly to deceive and defraud, hath not as yet paid to the same *Richard* the aforesaid several Sums of Money, or any Part thereof,

King's
Bench.

thereof, (although the aforesaid *William* afterwards, to wit, the same Day and Year last abovesaid, and often afterwards, at *St. Neots* aforesaid in the County aforesaid, by him the said *Richard* had been requested so to do,) but he hath hitherto absolutely refused, and still doth refuse to pay the same to him, to the Damage of him *Richard* twenty Pounds: And therefore he brings his Suit, &c.

Pledges, &c.

*Against a High Bailiff for a false
Return.*

York, to wit, **F**. *P.* Gentleman, complains of **F.** *W. S.* Gentleman, High Bailiff of the Honour of *Pontefract* in the County of *York* aforesaid, in Custody of the Marshal, &c. for that, to wit, That where-
as the same *F.* lately, to wit, in the Term of the *Holy Trinity* in the sixth Year of the Reign of the Lord the now King, in the Court of the same Lord the King before the King himself, (the same Court then being at *Westminster* in the County of *Middlesex*.) by the Judgment of the same Court had recovered against one *R. S.* twenty Pounds of Debt, and also forty Shillings for his Damages which he had sustained as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended; whereof the aforesaid *Richard* was convicted, as by the Record and Process thereof in the Court of the said Lord the

now King, before the King himself at *West- King's*
minster aforesaid remaining, manifestly ap- Bench.
 pears: And whereas also the aforesaid *F.*
 for obtaining the Debt and Damages aforesaid of and upon the Judgment aforesaid, afterwards, to wit, the fifteenth Day of *May* in the sixth Year of the Reign of the Lord the now King before the King himself, (the same Court then also being at *Westminster* in the County of *Middlesex* aforesaid,) there issued out of the same Court of the said Lord the King before the King himself, a certain Writ of *Latitat* against the aforesaid *R.* directed to the Sheriff of *York*, by which said Writ the same Lord the now King commanded the same Sheriff of *York*, that he should take the aforesaid *R.* if he might be found in his Bailiwick, and should keep him safe, so that he might have his Body before the said Lord the King at *Westminster* on *Monday* next after fifteen Days of *St. Martin* then next following, to answer to the same *F.* of a Plea of Trespass; and also to the Bill of him the said *F.* against the aforesaid *R.* for 22 *l.* of Debt, according to the Custom of the Court of him the Lord the King, before the King himself to be exhibited: Which said then Sheriff of *York*, to wit, *F. G. Esq;* afterwards, and before the Return of that Writ, to wit, the tenth Day of *July* in the sixth Year aforesaid, at *Leeds* in the County of *York* aforesaid, ordered the Execution of the same Writ to be delivered to him the aforesaid *W. S.* then and always afterwards hitherto High Bailiff of the Liberty of the Honour of *Pontefract* in the County of *York* aforesaid; which

Declarations in Case.

which said High Bailiff then had and still hath full Execution and Return of all Writs and Executions within the same Liberty, and the Execution of the Writ aforesaid wholly belonged to him to do, for that the Execution thereof within that Liberty in the Bailiwick aforesaid, by him the Sheriff could not be done; by Virtue of which said Command to the aforesaid *W. S.* afterwards, and before the Return of that Writ, to wit, on the nineteenth Day of *September* in the fifth Year aforesaid, at *Leeds* aforesaid within his Liberty aforesaid, took and arrested the aforesaid *R. S.* and him then and there had and detained in Prison under his Custody, by Reason of the Arrest aforesaid: And the aforesaid *R.* so being as aforesaid in Prison under the Custody of the aforesaid *W. S.* Bailiff of the Liberty aforesaid, he the same *W. S.* in no wise regarding his said Office, but contriving and fraudulently intending him the said *F.* in this Behalf unjustly to surcharge, and him *F.* to hinder and wholly deprive of the obtaining of his Debt and Damages aforesaid, afterwards, to wit, on the twenty-third Day of *September* in the fifth Year aforesaid, at *Leeds* aforesaid, permitted the aforesaid *Richard* to go and escape out of his Custody at large, where the aforesaid *R.* would, without the Consent and against the Will of him the said *F.* the same *F.* of the Debt and Damages aforesaid owing of and upon the Judgment aforesaid, or any Part thereof, then or still not being paid or satisfied: And at the aforesaid *Monday* next after fifteen Days of *St. Martin*, the aforesaid *W. S.* falsely and fraudulently returned to the same

J. G. then being Sheriff of the County of King's York aforesaid; which said Return of W. S. Bench. by the same J. G. then Sheriff of the County of York aforesaid, as is reported, being upon the Writ of *Latitat* aforesaid, at the Day of that Return, to wit, on the aforesaid Monday next after fifteen Days of St. Martin, was sent and certified to the Lord the King at *Westminster*, that he the same W. S. High Bailiff of the Liberty aforesaid, had taken the Body of the aforesaid R. S. whose Body he had ready before the said Lord the King at the aforesaid Day and Place in the same Writ contained, as by the same Writ is commanded; when in Truth the aforesaid W. S. then being High Bailiff of the Liberty aforesaid, had not the Body of the aforesaid R. before the said Lord the King at the aforesaid Day and Place in the Writ aforesaid contained; by which the same F. is not only deprived of his Remedy for the obtaining of the Debt and Damages aforesaid against the aforesaid R. who always after the Escape aforesaid in a Place unknown to the aforesaid F. hath been hiding and skulking; but also the same F. his Debt and Damages aforesaid of and upon his Judgment aforesaid, so as aforesaid recovered, hath totally lost, to the Damage of him the said F. forty Pounds; And therefore brings his Suit, &c.

King's
Bench.

*Upon a Wager concerning the Age of
a Person.*

Cornwall, to wit, **E.** N. complains of **E. J. N.** Esq; in Custody of the Marshal, &c. for that, to wit, That **whereas** on the thirtieth Day of *April* in the fifth Year of the Reign of the Lord the now King, at *Launceston* in the County aforesaid, a certain Discourse was moved and had between the said *Elizabeth* and the aforesaid *John* concerning a common Recovery suffered by *Erisey Nicholls*, Gentleman, Brother of the aforesaid *John*, in the Court of the Lord the now King, of the Bench at *Westminster* in the County of *Middlesex*, as of *Michaelmas* Term, in the first Year of his Reign, of the Manors of *Frethen*, &c. in the County of *Cornwall* aforesaid, and the Question or Doubt between them was, Whether the aforesaid *Erisey Nicholls*, at the Time of the suffering the common Recovery aforesaid, was of the Age of One and twenty Years, or under that Age; and upon the Discourse aforesaid, the same *Elizabeth* hath asserted, that the aforesaid *Erisey*, at the Time of suffering the common Recovery aforesaid, was of the Age of One and twenty Years; which said Assertion of her *Elizabeth* the aforesaid *John* then and there utterly denied, saying, That the aforesaid *Erisey*, at the Time of suffering the common Recovery aforesaid, was not of the Age of One and twenty Years, but under that Age; and thereupon the aforesaid *John*, the aforesaid

said twenty-first Day of *April* in the fifth King's Year abovesaid, at *Launceston* abovesaid, in Bench. Consideration that the same *Elizabeth*, at the special Instance and Request of the abovesaid *John*, then and there had paid into the Hands of the abovesaid *John* ten Shillings, assumed upon himself, and then and there faithfully promised the same *Elizabeth*, that he, the abovesaid *John*, would pay to the abovesaid *Elizabeth* five Pounds, if the abovesaid *Erisey Nicholls*, at the Time of suffering the common Recovery abovesaid, was of the Age of One and twenty Years: And the same *Elizabeth* avers, that the abovesaid *Erisey Nichols*, at the Time of the suffering the common Recovery abovesaid, was of the Age of Twenty-one Years: Nevertheless the abovesaid *John*, not at all regarding his Promise and Assumption abovesaid, but contriving, and fraudulently intending her *Elizabeth*, in this Behalf, craftily and subtilly to deceive and defraud, hath not paid the abovesaid five Pounds, or any Part thereof, to the same *Elizabeth*, although often requested, to wit, (*such a Day and Place*), or for the same any ways contented her, but hitherto hath altogether refused, and still doth refuse to pay the same to her, to the Damage of her *Elizabeth*, ten Pounds; And therefore she brings her Suit, &c.

King's
Bench.

Declaration, at the Suit of an Executor, for Goods sold and delivered; and upon two Notes.

Middlesex, to wit, **H.** B. Gentleman, Executor of the last Will and Testament of *J. B.* deceased, complains of *Samuel M.* being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that, to wit, that **Whereas** the aforesaid *Samuel*, in the Life-time of the aforesaid *J.* to wit, on the first Day of *November* in the Year of our Lord One thousand seven hundred and thirty, at *Westminster* in the County of *Middlesex*, was indebted to the same *J.* in ten Pounds of lawful Money of *Great Britain*, for divers Goods, Wares and Merchandizes, to the same *S.* by the same *J.* at the special Instance and Request of him the said *S.* before that Time sold and delivered; and being so thereof indebted, he, the aforesaid *S.* in Consideration thereof afterwards, to wit, the same Day and Year at *Westminster* in the County aforesaid, assumed upon himself, and then and there faithfully promised the same *J.* in his Life-time, that he, the aforesaid *S.* would well and truly pay and content the aforesaid ten Pounds to the same *J.* when thereto afterwards he should be required. **And whereas also** the aforesaid *S.* in the Life-time of the aforesaid *J.* to wit, the Day and Year abovesaid, at *Westminster* aforesaid in the County aforesaid, in Consideration that the same *J.* at the like Instance and Request

quest of him the said S. had sold and delivered King's
to the aforesaid S. divers other Goods, Wares, Bench.
and Merchandizes, assumed upon himself, and
then and there faithfully promised the same J.
that he the same S. would well and truly pay and
content the same S. so much Money, as the Goods,
Wares and Merchandizes last mentioned were
reasonably worth, at the Time of the Sale and
Delivery of the same, when he should be there-
to afterwards requested. And the same H. avers,
That the Goods, Wares and Merchandizes last
mentioned, at the Time of the Sale and Deli-
very of the same, were reasonably worth other
ten Pounds of like lawful Money of *Great*
Britain, whereof the same S. afterwards, to wit,
the same Day and Year last mentioned, and of-
ten afterwards, at *Westminster* aforesaid in the
County aforesaid, had Notice. And whereas
also the aforesaid S. afterwards, in the Life-
time of the aforesaid J. to wit, the second
Day of *November* in the Year aforesaid at
Westminster aforesaid in the County aforesaid,
accounted together with the same J. of and
concerning divers other Sums of Money to the
same J. by the aforesaid S. before that Time
due, and then being in Arrear and unpaid :
And upon that Account, the aforesaid S. then
and there was found in Arrear towards the
aforesaid J. in 8*l.* 15*s.* 0*d.* of like lawful
Money; and being so thereof found in Arrear
the aforesaid S. in Consideration thereof, after-
wards, to wit, the same Day and Year last
mentioned, at *Westminster* aforesaid in the
County aforesaid, assumed upon himself, and
then and there faithfully promised the same J.
that he the aforesaid S. would well and truly pay
and

Declarations in Case.

and content to the same *J.* the aforesaid 8 l. 15 s. last mentioned, when he should be afterwards thereto requested: **And whereas also** the aforesaid *S.* afterwards, and after the Death of the aforesaid *J.* to wit, the twelfth Day of *August* in the Year of our Lord One thousand seven hundred and thirty-one, at *Westminster* aforesaid in the County aforesaid, accounted together with the aforesaid *H.* as Executor of the last Will and Testament of the aforesaid *J.* of and concerning divers other Sums of Money to the said *John* in his Lifetime, and to the same *H.* as his Executor after the Death of the aforesaid *J.* and before that Time due, and to the same *H.* as Executor in Form aforesaid then being due and unpaid; and upon that Account the aforesaid *S.* then and there was found in Arrear towards the aforesaid *H.* as Executor of the said *J.* in another Sum of eight Pounds fifteen Shillings of like lawful Money; and being so thereof in Arrear the aforesaid *S.* in Consideration thereof afterwards, to wit, the same Day and Year last mentioned, at *Westminster* aforesaid in the County aforesaid, assumed upon himself, and then and there faithfully promised the same *H.* as Executor aforesaid to pay to him the same last mentioned Sum of Money, when he should be thereunto afterwards requested by the said *H.* **And whereas also** the aforesaid *S.* afterwards, and after the first Day of *May* in the Year of our Lord One thousand seven hundred and five, to wit, the twelfth Day of *August* abovesaid, at *Westminster* aforesaid in the County aforesaid, made his certain Note in Writing, subscribed with his proper Hand, bearing

bearing Date the same Day and Year last mentioned, and the same Note to the said *H.* as Bench. King's
 Executor in Form aforesaid delivered, and by
 the same Note promised to pay to the aforesaid *H.* as Executor in Form aforesaid, or Order, another Sum of eight Pounds fifteen Shillings, upon the twenty-third Day of *October* then next following; and by Reason thereof, and also by Force of the Statute in that Case made and provided, the said *S.* became liable to pay to the same *H.* as Executor in Form aforesaid, or Order, the same Sum of Money, according to the Tenor of that Note; and being so liable the aforesaid *S.* in Consideration thereof afterwards, to wit, the same Day and Year, at *Westminster* aforesaid in the County aforesaid, assumed upon himself, and then and there promised the same *H.* as Executor in Form aforesaid, to pay him the said last mentioned Sum of Money: **Nevertheless** the aforesaid *S.* not at all regarding his several Promises and Assumptions aforesaid, but contriving and fraudulently intending the said *J.* in his Life-time, and the aforesaid *H.* after the Death of him the said *J.* craftily and subtilly to deceive and defraud, hath not paid the aforesaid several Sums of Money in the first, second, and third Promises aforesaid mentioned, or any Part thereof, to the aforesaid *J.* in his Life-time, or the said Sums of Money to the same *H.* after the Death of the said *J.* or the aforesaid other Sums in the other Promises aforesaid specified, or any Part thereof, to the same *H.* after the Death of the said *J.* (although the aforesaid *S.* by the aforesaid *J.* in his Life-time, to wit, the third Day of

King's
Bench.

November in the Year of our Lord One thousand seven hundred and thirty-one above-said, and by the same *H.* as Executor in Form aforesaid, after the Death of him *J.* to wit, the twenty-fourth Day of *October* in the Year of our Lord One thousand seven hundred and thirty-two above-said, hath been requested so to do). Wherefore the same *H.* saith, That he is injured, and hath Damage to the Value of sixty Pounds; And therefore brings his Suit. And the same *H.* brings here into Court the Letters Testamentary of the aforesaid *J.* by which it sufficiently appears to the Court here him *H.* to be the Executor of the Testament aforesaid; And hath Execution thereof, &c.

For Coachmaker's Work and Materials found, against an Executor, at the the Suit of Executors.

Issue.

Middlesex, to wit, **B**E it remembered, that heretofore, to wit, in the Term of the Holy *Trinity* in the sixth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. before the Lord the King at *Westminster* came *P. A.* Widow, *E. A.* and *R. R.* Gentleman, Executors of the last Will and Testament of *S. A.* deceased, by *James Crofton* their Attorney, and exhibited into the Court of the said Lord the King then there their certain Bill against *H. F.* Esq; Executor of the last Will and Testament of *J. B.* Esq; in Custody of the Marshal, &c. of a Plea of Trespass upon the Case; and there are Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*; which said Bill follows

follows in these Words, to wit, **Middlesex**, King's
to wit, *P. A.* Widow, *E. A.* and *R. R.* Gentle- Bench.
men, Executors of the last Will and Testa-
ment of *S. A.* deceased, complain of *H. F.*
Executor of the last Will and Testament of
J. B. Esq; deceased, being in the Custody of
the Marshal of the *Marshalsea* of the Lord
the King before the King himself, for that,
to wit, that **whereas** the aforesaid *J.* in his
Life-time, to wit, on the first Day of *April* in
the sixth Year of the Reign of the Lord *George*
the Second, now King of *Great Britain, &c.* at
the Parish of *St. Clements Danes* in the County
aforesaid, was indebted to the aforesaid *S.* in
his Life-time, in twenty-six Pounds of lawful
Money of *Great Britain*, for Coachmaker's
Work by the aforesaid *S.* in his Life-time, at
the special Instance and Request of the afore-
said *J.* in his Life-time, before then done
and performed, and for divers necessary
Things and Materials in and about the Work
aforesaid used and imployed; and by the a-
foresaid *S.* at the like Instance and Request
of the aforesaid *J.* before that Time found
and provided; and also for divers Wheels,
and divers other Goods of him *S.* by the afore-
said *S.* in his Life-time, to the aforesaid *J.* in
his Life-time, and at his like Instance, before
that Time sold and delivered: And being
so thereof indebted the aforesaid *J.* in his
Life-time, in Consideration thereof after-
wards, to wit, the same Day and Year above-
said, at the Parish aforesaid in the County
aforesaid, assumed upon himself, and then and
there faithfully promised the same *S.* in his
Life-time, to pay him that said Sum of Mo-
ney

Declarations in Case.

ney upon the first Day of *May* then next following : And whereas also the aforesaid *S.* in his Life-time afterwards, to wit, the Day and Year abovesaid, at the Parish aforesaid, had made and performed divers other Coach-maker's Works for the aforesaid *J.* and at his like Instance and Request in his Life-time, and had found and provided for the aforesaid *J.* in his Life-time other Things necessary, and Materials in and about those Works used and imployed, and also had sold and delivered divers other Wheels of him *S.* to the aforesaid *J.* in his Life-time, the aforesaid *J.* in his Life-time, in Consideration thereof afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid in the County aforesaid, assumed upon himself, and then and there faithfully promised the aforesaid *S.* in his Life-time, to pay him so much Money as he therefore reasonably deserved to have : And the said *P. A. E. A.* and *R. R.* aver, that the aforesaid *S.* in his Life-time thereupon reasonably deserved to have from the said *J.* in his Life-time another Sum of 26 *l.* of like lawful Money of *Great Britain*, whereof the aforesaid *J.* in his Life-time afterwards, to wit, the same Day and Year abovesaid, at the Parish aforesaid, from the said *S.* in his Life-time, had then and there Notice : Yet the aforesaid *J.* in his Life-time, and the aforesaid *H. F.* after the Death of the said *J. B.* not at all regarding the several Promises and Assumptions of the aforesaid *J. B.* the aforesaid several Sums of Money, or any Part thereof, to the aforesaid *S.* in his Life-time, or to the same *P. E.* and *R.* or any of them,

after the Death of the aforesaid S. have not King's paid, nor hath either of them paid, nor Bench. for the same any way contented, although the aforesaid J. B. in his Life-time, and the aforesaid H. F. after the Death of the aforesaid J. B. by the aforesaid S. in his Life-time, and them the said P. A. E. and R. after the Death of the aforesaid S. were thereto likewise required so to do, but they have not paid, nor hath either of them paid the same to the aforesaid S. in his Life-time, or to them the said P. E. and R. or any of them, after the Death of the aforesaid S. but they have hitherto absolutely refused to pay, or any way content for the same, the aforesaid S. in his Life-time, and them P. E. and R. after the Death of the aforesaid S. and the aforesaid H. still refuses to pay the same, to the Damage of them P. E. and R. 40 l. and in Delay of the Execution of the Will aforesaid; And thereof bring their Suit. And they bring here into Court the Letters Testamentary of the aforesaid S. by which it sufficiently appears to the Court here them P. E. and R. to be the Executors of the Will aforesaid; And hath the Administration thereof, &c.

For Bricklayer's Work and Materials found.

Middlesex, to wit, **H.** A. complains of B.P. being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that, to wit, that **whereas** the aforesaid H. on

King's
Bench.

on the first Day of *December* in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at *Islington* in the County of *Middlesex* aforesaid, exercising the Trade of a Bricklayer, at the special Instance and Request of the aforesaid *B.* had made and performed for the same *B.* divers Works relating to the Trade of the said *H.* and also at the like special Instance and Request of the said *B.* had bought and provided for the same *B.* at the proper Costs and Charges of the said *H.* divers Necessaries and Materials used and laid out in and about the Performance of the Work aforesaid, the aforesaid *B.* in Consideration thereof afterwards, to wit, the same Day and Year, at *Islington* aforesaid, did assume upon himself, and then and there faithfully promise the same *H.* that he the aforesaid *B.* would pay to the same *H.* not only all such Sums of Money as he the same *H.* hath reasonably deserved to have for the Necessaries and Materials aforesaid, so as aforesaid bought and provided by the said *H.* and in and about the Performance of the Work aforesaid, so as aforesaid used and laid out; but also all such Sums of Money as he the same *H.* for his Work and Labour aforesaid reasonably deserved to have: And the aforesaid *H.* avers, That he the same *H.* the same first Day of *December* in the fifth Year aforesaid, at *Islington* aforesaid in the County aforesaid, reasonably deserved to have of the same *B.* 40 *l.* of lawful Money of this Kingdom for the Performance of the Work aforesaid; and also 50 *l.* of like Money for the Necessaries and Materials aforesaid, so as aforesaid by him *H.* bought

bought and provided, and in and about the ^{King's} Performance of the Work aforesaid used and ^{Bench.} laid out, whereof the aforesaid *B.* then and there had Notice: **And whereas** the aforesaid *B.* afterwards, to wit, the same Day and Year aforesaid, at *Islington* aforesaid in the County aforesaid, in Consideration that the aforesaid *H.* at the like special Instance and Request of the said *B.* before then had caused to be performed for the same *B.* divers other Works relating to the Trade of a Plaisterer, a Tiler, and other Trades and Labours in and about the Amending, Repairing and Cleansing divers Messuages and Tenements of him *B.* did likewise assume upon himself, and then and there likewise faithfully promised the same *H.* that he the same *B.* would well and truly pay and satisfy to the same *H.* so much Money for the several Works and Labours last mentioned as aforesaid done and performed, as he the same *H.* reasonably deserved to have for the same, when the aforesaid *B.* should be thereto afterwards required: And the same *H.* avers, that he the same *H.* the same Day and Year last aforesaid, at *Islington* aforesaid, reasonably deserved to have 100 *l.* for the several Works and Labours last mentioned so as aforesaid done and performed, whereof he the same *B.* then and there had Notice: **And whereas** also the aforesaid *B.* afterwards, to wit, the same Day and Year, at *Islington* aforesaid, was indebted to the same *H.* in other 40 *l.* of like lawful Money for divers Goods, Wares and Merchandizes by the aforesaid *H.* to the same *B.* before that Time sold and delivered; and being so thereof indebted the aforesaid

Declarations in Case.

said *B.* in Consideration thereof afterwards, to wit, the Day and Year abovesaid at *Islington* abovesaid assumed upon himself, and then and there likewise faithfully promised the same *H.* that he the same *B.* would well and faithfully pay and content unto the same *H.* the abovesaid 40 *l.* last mentioned, when he should be thereto required. **And whereas also** the abovesaid *B.* afterwards, to wit, the same Day and Year abovesaid at *Islington* abovesaid in the County abovesaid, in Consideration that he the same *H.* at the like special Instance and Request of the abovesaid *B.* before then had sold and delivered to the same *B.* divers other Goods, Wares, and Merchandizes, he the same *B.* assumed upon himself, and then and there faithfully promised the same *H.* that he the same *B.* would well and faithfully pay and content to the same *H.* so much Money for the Goods, Wares and Merchandizes last mentioned, to the same *B.* so as abovesaid sold and delivered, as those Goods, Wares and Merchandizes at the Time of the Sale and Delivery of the same were reasonably worth, when he should be thereunto afterwards requested by the said *H.* And the said *H.* avers, That the Goods, Wares and Merchandizes last mentioned, so as abovesaid to the said *B.* sold and delivered, were at the Time of the Sale and Delivery thereof reasonably worth other 40 *l.* of like lawful Money, of which the abovesaid *B.* the Day and Year abovesaid at *Islington* abovesaid had Notice. **And whereas also** the abovesaid *B.* afterwards, to wit, the same Day and Year abovesaid, at *Islington* abovesaid, was indebted to the same *H.* in the Sum of 50 *l.* of like lawful Money, for the like Sum of Money

Money by the said *H.* for the aforesaid *B.* and King's
at his special Instance and Request, before that Bench.
Time laid out and expended, and being so there-
of indebted, the aforesaid *B.* in Consideration
thereof afterwards, to wit, the same Day and
Year abovesaid, at *Islington* aforesaid, assumed
upon himself, and then and there faithfully
promised the same *H.* to pay him the last men-
tioned Sum of 50 *l.* when he should be thereto
afterwards required. And whereas also the
aforesaid *B.* afterwards, to wit, the first Day of
January in the Year abovesaid, at *Islington*
aforesaid, was indebted to the same *H.* in other
50 *l.* for his Service and other Works and La-
bours in and about the Business aforesaid of the
said *B.* before that Time done and performed,
and being so thereof indebted the said *B.* in
Consideration thereof afterwards, to wit, the
same first Day of *January* in the Year above-
said, at *Islington* aforesaid, assumed upon himself,
and then and there faithfully promised the same
H. to pay him the said 50 *l.* last mentioned,
when he should be thereunto afterwards re-
quested. And whereas also afterwards, to
wit, the same first Day of *January* in the
Year abovesaid, at *Islington* aforesaid, in Consi-
deration that he same *H.* at the like Instance and
Request of the aforesaid *B.* had then and there
before done and performed divers other Ser-
vices, Works and Labours for the aforesaid *B.*
in and about his other Businesses aforesaid, he
the same *B.* in Consideration thereof afterwards,
to wit, the same Day and Year last mentioned,
at *Islington* aforesaid assumed upon himself, and
then and there faithfully promised the aforesaid
H. that he the same *B.* would well and truly
pay

King's
Bench.

pay and content him the same *H.* so much Money for his last mentioned Services, Works and Labours, as he the same *H.* reasonably deserved to have for the same. And the same *H.* avers, That he the same *H.* the same Day and Year last mentioned, at *Islington* aforesaid, reasonably deserved to have for his Services, Works and Labours last mentioned, other 50 *l.* of like Money, whereof the same *B.* had then and there Notice: *Yet* the aforesaid *B.* not at all regarding his several Promises and Assumptions, so as aforesaid made, but contriving and fraudulently intending the same *H.* in this Behalf craftily and subtilly to deceive and defraud, hath not as yet paid the aforesaid *H.* the aforesaid several Sums of Money, or any Part thereof, (altho' often required,) but hath hitherto refused, and still doth refuse to pay, or any Way content him for the same, to the Damage of the said *H.* 60 *l.* and therefore brings his Suit, &c.

For hindering a Tenant to take Possession according to Lease Parol.

Middlesex, to wit, **E** *Lizabeth Parry*, Widow, complains of *John Ewen*, being in the Custody of the Marshal, &c. for that, to wit, That **whereas** on the first Day of *March* in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at *Westminster* in the County of *Middlesex*, a certain Discourse was moved and had between the aforesaid *Elizabeth* and *John* of and concerning a certain Messuage and Garden, with the Appurtenances, situate and being at *Barnet* in the County of *Middlesex*

Middlesex aforesaid, upon which said Discourse King's Bench. it was then and there agreed between the aforesaid *Elizabeth* and *John*, that the aforesaid *John* should suffer or permit the aforesaid *Elizabeth* to use, enjoy, and have the Possession of the Messuage and Garden aforesaid, with the Appurtenances, from the Feast of the Annunciation of the Blessed Virgin *Mary* in the Year above said, for one whole Year from thence next following; and that the aforesaid *Elizabeth* should pay to the aforesaid *John* for the same the Sum of 14 *l.* of lawful Money of *Great Britain*. And the aforesaid *John* then and there, in Consideration that the aforesaid *Elizabeth*, at the special Instance and Request of him the said *John*, undertook upon herself to pay to the aforesaid *John* the said Sum of 14 *l.* he the said *John* then and there faithfully promised to perform and fulfil all and singular the Articles contained in that Agreement, on the Part of the said *John* to be performed and fulfilled. And whereas also afterwards, to wit, the same Day and Year, at *Westminster* aforesaid, the same *J.* demised, and to Farm let unto the aforesaid *Elizabeth*, one other Messuage and Garden, with the Appurtenances in *Barnet* aforesaid, to hold from the Feast of the Annunciation of the Blessed Virgin *Mary* in the Year above said, for one whole Year from thence next following, the aforesaid *John* thereupon then and there, in Consideration that the aforesaid *Elizabeth*, at the special Instance and Request of the said *John*, had then and there paid to the same *John* the Sum of 2 *s.* 6 *d.* and had assumed upon herself to pay to the same *John* the further Sum of 13 *l.* 17 *s.* 6 *d.* assumed upon himself, and then and there faithfully promised

King's
Bench.

the same *Elizabeth*, to permit the aforesaid *Elizabeth* to enter in and upon the Messuage and Garden aforesaid last mentioned, with the Appurtenances, at the Feast of the Annunciation of the Blessed Virgin *Mary* in the fifth Year aforesaid, and from thence for one whole Year to have the Use and Possession thereof according to the Form and Tenor of the Demise aforesaid. And the aforesaid *Elizabeth* avers, that she the same *Elizabeth* hath performed and fulfilled all and singular the Articles in the several Agreements contained, on the Part of the said *Elizabeth* to be performed, according to the Form of the Agreement aforesaid; *Yet* the aforesaid *John*, not at all regarding his several Promises and Assumptions in Form aforesaid made, but contriving and fraudulently intending the same *Elizabeth* in this Behalf craftily and subtilly to deceive and defraud, hath not suffered the same *Elizabeth* to use, occupy, and have the Possession of the Messuage and Garden, with the Appurtenances aforesaid first mentioned, or to enter into, have the Use and Possession of the aforesaid last mentioned Messuage and Garden, but hath wholly refused the same *Elizabeth* to enter into the same, and have the Use and Possession of them, and hath kept her *Elizabeth* out of the Possession of the same, from the Feast of the Annunciation aforesaid, unto — to the Damage of her *Elizabeth* — and therefore brings her Suit, &c.

For immoderate riding a Horse, contrary to Promise.

Middlesex, to wit, **E.** *F.* complains of *G. H.* in the Custody of the Marshal, &c. for that, to wit, That whereas
the

the aforesaid *G.* on the seventh Day of *October* King's
in the Year of our Lord One thousand seven Bench.
hundred and thirty-one, at *Westminster* in the
County of *Middlesex*, in Consideration that he
the same *E.* at the special Instance and Request
of the said *G.* would lend and deliver to the
same *G.* one Gelding, for him the said *G.* to ride
single on from *Westminster* aforesaid to the City
of *Gloucester*, and from thence back from the
same City of *Gloucester* unto *Westminster* aforesaid,
He the same *G.* assumed upon himself, and
then and there faithfully promised the same *E.*
that he the aforesaid *G.* would well and sufficiently
feed and keep, and moderately use the Horse
aforesaid; and the same Horse, after his performing
such Journey, would re-deliver to the same
E. safe and sound; and that also he the aforesaid
G. would well and truly pay to the aforesaid *E.*
at and after the Rate of 12 *d.* a Day for the Hire
of the said Horse for every Day he should so have
and keep the aforesaid Horse, when he should be
thereto afterwards required. And although the
same *E.* upon the Hopes, and in Expectation of
the faithful Performance of the said Promises and
Assumptions of the aforesaid *G.* at the Instance
and Request of the same *G.* afterwards, to wit,
the Day and Year abovesaid, at *Westminster* aforesaid,
lent and delivered to the aforesaid *G.* the
Horse aforesaid, for the same *G.* to ride upon, in
Form aforesaid: And although also the aforesaid
G. had and kept that Horse for the Space of
Fourteen Days next after the Lending and Delivery
thereof: And although moreover the 12 *d.*
for every Day of the same Fourteen Days amounted
in the whole to 14 *s.* of lawful Money
of *Great Britain*, Yet the aforesaid *G.* not at all

Declarations in Case.

regarding his Promises and Assumptions aforesaid, but contriving and fraudulently intending the same *E.* in this Behalf craftily and subtilly to deceive and defraud, hath not paid the aforesaid 14 s. to the same *E.* or any way contented him therefore, although by the same *E.* on the sixth Day of *September* in the Year aforesaid, and often afterwards, at *Westminster* aforesaid, he had been required so to do, but hath hitherto absolutely refused, and still doth refuse to pay or content him for the same. And the same *G.* hath so negligently kept the Horse aforesaid, and with carrying double in the Journey aforesaid, hath so much tired and immoderately worked and ill-used the Horse aforesaid, that by Means thereof he is become of no Value to the said *E.* to the Damage of the said *E.* 10 l. And therefore he brings his Suit, &c.

By Husband and Wife, the Wife being Executrix, for Money had and received to the Use of the Testator.

Middlesex, to wit, **M.** *B. and A. his Wife, Executrix of the last Will and Testament of J. P. deceased, complain of X. S. in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid X. in the Life-time of the said J. to wit, the ninth Day of April in the Year of our Lord One thousand seven hundred and thirty-one, at Westminster in the County aforesaid, was indebted to the same J. in his Life-time, in 20 l. for so much Money by the same X. to the Use of the same J. before then had and received; and being so thereof indebted the same X. in Consideration thereof,*
assumed

assumed upon himself, and then and there King's
faithfully promised the same J. in his Life-time Bench.
to pay him the same Sum of Money, when he
should be afterwards thereto requested: **But**
the aforesaid X. not at all regarding his Promise
and Assumption aforesaid, but contriving and
fraudulently intending the same J. in his Life-
time, and the aforesaid A. whilst she was Sole
after his Death, and the aforesaid M. and A.
after their Marriage, in this Behalf craftily and
subtilly to deceive and defraud, hath not as
yet paid the aforesaid Sum of Money, or any
Part thereof to them, or either of them, altho'
the aforesaid X. in the Life-time of the same J.
by him the said J. and after the Death of the
said J. by the said A. whilst she was sole, and
by the aforesaid M. and A. after their said
Marriage, to wit, on the first Day of *January*
in the Year abovesaid, was required so to do,
but he hath hitherto absolutely refused, and
still doth refuse to pay them, or any of them,
to the Damage of them the said M. and A. 50 l.
And therefore they bring their Suit, &c. And
the same M. and A. bring here into Court the
Letters Testamentary of the aforesaid *James*,
by which it fully appears to the Court here,
that she the said A. is Executrix of the afore-
said Will, And hath Execution thereof, &c.

Declaration for not saving a Man harmless, &c.

York, to wit, **D.** R. complains of S. B. in
Custody of the Marshal, &c.
for that, to wit, that **whereas** the aforesaid
D d 3 S.

King's
Bench,

S. on the seventh Day of *October* in the Year of our Lord One thousand seven hundred and thirty-one, at *Leeds* in the County of *York* aforesaid, in Consideration that the aforesaid *D.* at the special Instance and Request of the said *S.* would become bound with the aforesaid *S.* as the Surety of him the said *S.* and for the proper Debt of the said *S.* to one *W. W.* for One hundred Pounds of lawful Money of *Great Britain*, assumed upon himself, and then and there faithfully promised the same *D.* that he the same *S.* would keep the same *D.* harmless of and from all Damages which to the same *D.* by occasion of his being bound for the aforesaid *S.* in Form aforesaid, might or could happen: And the aforesaid *D.* avers, that he believing the aforesaid Promise and Assumption of the aforesaid *S.* afterwards, to wit, the Day and Year abovesaid, at *Leeds* aforesaid, at the special Instance and Request of him the said *S.* by his certain Writing Obligatory then and there made, and sealed with the Seals of them the said *S.* and *D.* and as their Deed then and there delivered to the aforesaid *W.* whereby the same *D.* together with the aforesaid *S.* as Surety of the said *S.* and for the proper Debt of him the said *S.* in due Form of Law became bound to the aforesaid *W.* in the aforesaid 100 *l.* to be paid to the same *W.* his Executors or Administrators: And the aforesaid *D.* further avers, that the aforesaid *S.* hath not paid to the aforesaid *W.* his Executors or Administrators, the aforesaid 100 *l.* in the Writing obligatory aforesaid specified or any Part thereof: And that the City of *York* aforesaid is, and from the whole Time whereof the Memory of Man is not

to

to the contrary was an antient City, and that within the same City is had, and from the whole Time aforesaid was had, a certain Court of Pleas of the Lord the King of Record, held within the City aforesaid, before the Sheriff of the same City for the Time being, according to the Custom of the same City from the whole Time aforesaid hitherto used and approved of in the same; And that the aforesaid *W.* for that the aforesaid One hundred Pounds in the Writing Obligatory aforesaid specified to the same *W.* were not paid, afterwards, to wit, at the aforesaid Court of the Lord the King held within the City aforesaid on *Monday*, &c before *T.H.* then Sheriff of the City aforesaid, entered and commenced his certain Complaint against the aforesaid *D.* of a Plea of Debt for 200*l.* upon Demand, for Recovery of the Debt upon the Writing Obligatory aforesaid, and his Damages by Occasion of the Detention of that Debt; and thereupon in the same Court he wholly proceeded, that he the same *W.* afterwards, to wit, the Day and Year abovesaid, at the City of *York* aforesaid, within the Jurisdiction of the same Court, by Virtue of due Process of Law out of the same Court upon the Complaint aforesaid issuing, by one *R. M.* then Serjeant at Mace and Officer of that Court, caused him *D.* to be taken and arrested, by which the same *D.* to free himself from the Arrest aforesaid and for the obtaining of his Liberty, afterwards, to wit, the Day and Year last abovesaid, at the City of *York* aforesaid, was forced and compelled to pay the same *W.* the One hundred Pounds Debt in the Writing Obligatory aforesaid specified, and also twenty Shillings for the Da-

King's
Bench.

King's
Bench.

images and Costs of the aforesaid *W.* by him about his Suit in that Behalf laid out, and also to expend the Sum of 2 *l.* by Occasion of the Premises aforesaid: And so the same *D.* saith, that he, by Occasion of being bound for the aforesaid *S.* in Form aforesaid, is damified in the same several Sums of Money, amounting in the whole to 103 *l.* whereof the same *D.* afterwards, to wit, the — Day of — in the Year — at the City of *York* aforesaid, gave Notice to the aforesaid *S.* and then and there required the same *S.* to keep indemnified the aforesaid *D.* of and from the Damages aforesaid, according to the Promise and Assumption of him the said *S.* abovesaid: **And whereas** also the same *D.* afterwards, to wit, the Day and Year last abovesaid, at *York* aforesaid, at the special Instance and Request of the aforesaid *S.* had lent to one *W. W.* 51 *l.* of like lawful Money of *Great Britain*, and the same 51 *l.* of the same *W. W.* had then afterwards intended to demand, the aforesaid *S.* afterwards, to wit, the same Day and Year last abovesaid, at the City of *York* aforesaid, in Consideration of the lending of the same 51 *l.* to the aforesaid *W.* in Form aforesaid, and also in Consideration that the aforesaid *D.* at the special Instance and Request of him the said *S.* would not trouble the aforesaid *W.* for the aforesaid 51 *l.* by him *D.* to the aforesaid *W.* so as aforesaid lent, assumed upon himself, and then and there promised the aforesaid *D.* that he would well and truly pay to the same *D.* the aforesaid 51 *l.* when he should be there-to afterwards required; And the aforesaid *D.* avers, that he believing the last mentioned

Promise

Promise and Assumption of the aforesaid *S.* King's Bench.
 from the aforesaid Time of the making that
 Promise and Assumption, hitherto hath not
 any Way molested the aforesaid *W. W.* for
 the aforesaid 51 *l.* by the said *D.* to the same
W. in Form aforesaid lent, nor is he for the
 same any Way hitherto satisfied: And that he
 the same *D.* afterwards, to wit, the Day and
 Year abovesaid, at the City of *York* afore-
 said, gave the aforesaid *S.* Notice thereof, and
 then and there required the same *S.* to pay
 to the same *D.* the aforesaid 51 *l.* accord-
 ing to the Promise and Assumption of him the
 said *S.* aforesaid: **Yet** the aforesaid *S.* in no
 Way regarding his several Promises and Assump-
 tions aforesaid, but contriving and fraudulently
 intending the said *D.* craftily and subtilly to de-
 ceive and defraud, hath not kept him the said
D. harmless and indemnified, according to the
 Promise and Assumption of the said *S.* first a-
 bove mentioned, nor hath hitherto paid to the
 same *D.* the aforesaid 51 *l.* according to the
 last mentioned Promise and Assumption of him
 the said *S.* but hath hitherto intirely refused,
 and still doth refuse to perform his several Pro-
 mises and Assumptions aforesaid, to the Da-
 mage of the said *D.* Two hundred Pounds;
 And thereof brings his Suit, &c.

By a Surgeon for Curing a Wound.

York, to wit, **C.** *D.* complains of *A. B.* in
 Custody of the Marshal, &c.
 for that, to wit, That **whereas** the aforesaid
A. on the seventh Day of *October* in the Year
 of our Lord One thousand seven hundred and
 thirty-

Declarations in Case.

thirty one, at *Leeds* in the said County of *York*, greatly laboured and was afflicted with a dangerous Wound in his Hand, and the aforesaid *A.* knowing the same *C.* to be skilled in the Art of a Surgeon and in curing of many Wounds and Diseases, the aforesaid *A.* the Day and Year aforesaid, in Consideration that the same *C.* at the special Instance and Request of the aforesaid *A.* would use his Diligence and apply Plaisters, and endeavour to cure the Hand of the said *A.* of the Wound aforesaid, the aforesaid *A.* assumed upon himself, and then and there faithfully promised the same *C.* that he the aforesaid *A.* would well and faithfully pay and content the same *C.* what he should reasonably deserve of the same *A.* And the same *C.* avers, that he, upon the Hope of the faithful Promise and Assumption aforesaid of the aforesaid *A.* used his Diligence and applied Plaisters to the Hand of the aforesaid *A.* and endeavoured to cure the Wound aforesaid: And by the Care, Diligence and Labour, Plaisters and Expences of the said *C.* so as aforesaid applied, the Wound aforesaid was in a great Degree healed and cured: And the same *C.* further avers, That he the same *C.* reasonably deserved to have of the aforesaid *A.* for his Diligence, Labour and Plaisters so as aforesaid applied, and for the Cure of the Wound aforesaid 50*l.* whereof the same *A.* at *Leeds* aforesaid, on the Day and Year aforesaid, had Notice: But the aforesaid *A.* not at all regarding his Promise and Assumption aforesaid, but contriving and fraudulently intending the said *C.* craftily and subtilly to deceive and defraud in this Behalf, hath not paid to the same *C.* the aforesaid

said 50 *l.* or any Part thereof, according to his King's Promise and Assumption aforesaid, altho' the Bench. aforesaid *A.* by the same *C.* afterwards, to wit, the same Day and Year aforesaid, at *Leeds* aforesaid, was required so to do: But he hath hitherto absolutely refused, and still doth refuse to pay the same to him, to the Damage of him the said *C.* 20 *l.* And therefore he brings his Suit, &c.

On a Note given by the Defendant's Servant to the Plaintiff's Husband in his Life-time, for which she sues as Administratrix to her said late Husband.

London, to wit, **E** *Lizabeth Potter* Administratrix of all and singular the Goods and Chattels, Rights and Credits, which were *Ralph Potter's*, who died Intestate, complains of *George Downs* in Custody of the Marshal, &c. for that, to wit, That **whereas** *William Hillier*, as Servant of him *George Downs*, and by his Command, on the eleventh Day of *November* in the Year of our Lord One thousand seven hundred and thirty-one, at *London* in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheap*, made a certain Note in Writing, subscribed with the proper Hand of the said *William Hillier*, by which said Note the aforesaid *William Hillier* promised to pay to the aforesaid *Ralph Potter*, by the Name of *Mr. Ralph Potter*, 30 *l.* for his Master *George Downs*, upon Demand, for Value received; by which the aforesaid

George

Declarations in Case.

George Downs became liable to pay to the same *Ralph Potter* in his Life-time the aforesaid thirty Pounds, according to the Tenor of the Note aforesaid; and thereupon the same *George* in Consideration thereof assumed upon himself, and then and there faithfully promised the same *Ralph* in his Life time, to pay to the same *Ralph* the aforesaid thirty Pounds, according to the Tenor of the Note aforesaid: **And whereas also** the aforesaid *George* afterwards, to wit, the same Day and Year, at *London* aforesaid in the Parish and Ward aforesaid, was indebted to the same *Ralph* in his Life-time in other thirty Pounds of lawful Money, for the like Sum of Money by the said *George*, at the special Instance and Request of the said *George*, to the Use of the said *Ralph*, before then had and received: And so being thereof indebted the aforesaid *George* afterwards, to wit, the same Day and Year, at *London* aforesaid in the Parish and Ward aforesaid, in Consideration thereof assumed upon himself, and then and there faithfully promised the same *Ralph* in his Life-time, to pay him the last mentioned thirty Pounds, when he should be afterwards thereto required: **But** the aforesaid *George* not regarding his several Promises and Assumptions aforesaid, in Form aforesaid made, but contriving and deceitfully intending the same *Ralph* in his Life-time, and the aforesaid *Elizabeth* after his Death, to deceive and defraud of the aforesaid several Sums of Money, hath not paid the same several Sums, or any Part thereof, to the same *Ralph* in his Life-time, or after his Death to the aforesaid *Elizabeth*, to whom Administration of all and singular

singular the Goods and Chattels, Rights and King's Credits, which were the aforesaid *Ralph's* at the Bench. Time of his Death, on the — Day of — was granted by — to whom the Granting of Administrations of Right belonged; but to the same *Ralph* in his Life-time, or after his Death to the aforesaid *Elizabeth* hath absolutely refused to pay, and still doth refuse to pay the aforesaid *Elizabeth* the same, although the aforesaid *George* afterwards, to wit, the — Day of — in the Year — at *London* aforesaid, in the Parish and Ward aforesaid, by him the said *Ralph* in his Life-time, and after his Death, by the aforesaid *Elizabeth*, was required so to do. Wherefore the aforesaid *Elizabeth* saith, that she is the worse, and hath Damage to the Value of 30 *l.* And thereof she brings her Suit, &c. And the aforesaid *Elizabeth* brings here into Court the Letters of Administration, which testify the Granting of the Administration in Form aforesaid, &c.

For not delivering Goods bought.

Middlesex, to wit, **A.** *N.* complains of *J. T.* in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid (*Defendant*) on the — Day of — at *Westminster*, had sold to the same (*Plaintiff*) sixty Combs of Malt of *Lynn* Measure, in the County of *Norfolk*, for twenty Shillings of lawful Money of *Great Britain*, then and there in Hand paid by the aforesaid (*Plaintiff*) to the same (*Defendant*); and for 16 *s.* of like lawful Money, to be paid by the aforesaid (*Plaintiff*) to the same (*Defendant*) for every Comb thereof, upon

King's
Bench.

upon the Delivery thereof; the aforesaid (*Defendant*) afterwards, to wit, the — Day of — at, &c. in Consideration thereof, and in Consideration that the same (*Plaintiff*) at the special Instance and Request of him the said (*Defendant*) then and there undertook upon himself, and had faithfully promised the same (*Defendant*) to pay to the same (*Defendant*) 16 s. for every Comb of the aforesaid sixty Combs, upon the Delivery of the same sixty Combs of Malt to the same (*Plaintiff*.) besides the aforesaid 20 s. assumed upon himself, and then and there faithfully promised the same (*Plaintiff*) that he the aforesaid (*Defendant*) the aforesaid sixty Combs of Malt to the same (*Plaintiff*) at, or before *Lammas* Day next following, at *H.* aforesaid, would well and faithfully deliver. Yet the aforesaid (*Defendant*), &c. the aforesaid sixty Combs of Malt, or any Part thereof, to the same (*Plaintiff*) hath not delivered, but hitherto, &c.

For a Wager concerning a Horse Match.

Middlesex, to wit, **J.** *R.* complains of *J. B.* in Custody of the Marshal, &c. for that, to wit, That ~~whereas~~ on the first Day of *April* in the fifth Year of the Reign of the Lord *George* now King of *Great Britain*, &c. at, &c. a certain Discourse was moved and had between the aforesaid (*Plaintiff*) and the aforesaid (*Defendant*) as well of and concerning a certain Horse-Match before then made and performed, as of and concerning a certain Wager between the same (*Defendant*) and one *F. C.* concerning the Match aforesaid before then made, and of and concerning the Sum
of

of 20 s. of lawful Money of Great Britain, by the King's
aforesaid *F.C.* and of the Sum of 10 s. of like Bench.
lawful Money, by the aforesaid (*Defendant*)
before then respectively deposited in the Hands
of him the said (*Plaintiff*) to be delivered to
such of them *F.C.* and *J.B.* as should win the
said Wager. And upon that Discourse, the
aforesaid (*Defendant*) then and there affirmed
to the same (*Plaintiff*) that he the aforesaid
(*Defendant*) had won that Wager, and that
the several Sums of Money aforesaid were due
and payable to the same (*Defendant*), he the
said (*Defendant*) then and there, in Considera-
tion that the same (*Plaintiff*) at the special In-
stance and Request of the aforesaid (*Defendant*)
should deliver to the aforesaid (*Defendant*) the
aforesaid 20 s. and 10 s. so as aforesaid deposited
in his Hands, assumed upon himself, and then
and there faithfully promised the same (*Plain-
tiff*) that he the aforesaid (*Defendant*) would
thereupon keep indemnified him the (*Plaintiff*)
from the aforesaid *F.* And the same (*Plaintiff*)
avers, that he believing the Promise and Assump-
tion aforesaid of the aforesaid (*Defendant*) then
and there at the special Instance and Request of
the aforesaid (*Defendant*) delivered to the aforesaid
(*Defendant*) the aforesaid 20 s. and 10 s.
And the same (*Plaintiff*) further avers, That he
the aforesaid (*Defendant*) hath not won the
aforesaid Wager; and that the aforesaid (*De-
fendant*) had Notice of the said *F.C.* winning
the said Wager, to wit, the thirty-first Day of
March in the sixth Year aforesaid, at, &c.
and by the same (*Plaintiff*) was requested to
keep the same (*Plaintiff*) indemnified from the
aforesaid *F.* for the aforesaid 30 s. so as afore-
said

King's
Bench.

said delivered to the same (*Defendant*.) Yet the aforesaid (*Defendant*) not regarding his Promise and Assumption aforesaid, in Form aforesaid made, but contriving, and fraudulently intending the same (*Plaintiff*) in this Behalf craftily and subtilly to deceive and defraud, hath not kept indemnified the aforesaid (*Plaintiff*) from the aforesaid *F.C.* for the aforesaid 30 s. so as aforesaid delivered to the same (*Defendant*), by him the (*Plaintiff*); but the same (*Plaintiff*) afterwards, to wit, the aforesaid first Day of *April* in the sixth Year aforesaid, at, &c. was compelled to pay the aforesaid 30 s. to the same *F.C.* and hath there expended divers Sums of Money against the aforesaid *F.C.* Wherefore the same (*Plaintiff*) saith that he is greatly injured and hurt, and hath Damage to the Value of, &c.

In Consideration Plaintiff would lend Defendant a Horse, he promised, if he was hurt, to pay Plaintiff Six Pounds six Shillings.

London, to wit, **E.** *H.* complains of *F.M.* in Custody of the Marshal, &c. for that, to wit, That whereas the aforesaid (*Defendant*) on the eighteenth Day of *August* in the Year of our Lord One thousand seven hundred and thirty-two, at *London*, to wit, in the Parish of the *Blessed Mary of the Arches* in the Ward of *Cheap*, in Consideration that the same (*Plaintiff*) at the special Instance and Request of the aforesaid (*Defendant*) then and there had lent and hired to the same (*Defendant*)

dant) a certain gray Horse of the said (*Plain- King's*
tiff) for three Weeks, or one Month, for a Bench.
 certain Sum of Money agreed upon, assumed
 upon himself, and then and there faithfully
 promised the same (*Plaintiff*) that in case that
 Horse should happen to be damnified by the
 said (*Defendant*) then he would pay to the
 same (*Plaintiff*) six Pounds six Shillings on De-
 mand: And the same (*Plaintiff*) avers, that
 within the Time which the aforesaid (*Defen-
 dant*) had and kept the Horse aforesaid for his
 Use, and in his Possession, on the Hire afore-
 said, he the said (*Defendant*) rode that Horse
 so swiftly and irregularly, and worked him so
 inordinately and immoderately, and broke and
 lamed his Knees, that the Horse, at the Time
 which the aforesaid (*Defendant*) ought to have
 redelivered him to the same (*Plaintiff*) to
 wit, the twenty-eighth Day of *September* in the
 Year aforesaid, at *London* aforesaid in the Pa-
 rish and Ward aforesaid, was greatly damnified,
 lame, worsted and hurt, and became of little
 and almost of no Value to the same (*Plaintiff*);
 Yet the aforesaid (*Defendant*) not at all re-
 garding his Promise and Assumption aforesaid,
 but contriving and fraudulently intending the
 said (*Plaintiff*) in this Behalf craftily and sub-
 tilly to deceive and defraud, hath not as yet
 paid, or any Way contented to the same
 (*Plaintiff*) the aforesaid six Pounds six Shil-
 lings, or any Part thereof, (although by him
 the said (*Plaintiff*) on the tenth Day of *Octo-
 ber* in the Year aforesaid, at *London* aforesaid
 in the Parish and Ward aforesaid. he was re-
 quired so to do;) but hath hitherto altoge-
 ther refused, and still doth refuse to pay the

King's
Bench.

same to him: And whereas also the aforesaid (*Defendant*) the aforesaid twenty-eighth Day of *August* in the Year of our Lord aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, in Consideration that the same (*Plaintiff*) at the special Instance and Request of the aforesaid (*Defendant*) had hired to the aforesaid (*Defendant*) one other Horse of him the said (*Plaintiff*) for three Weeks, or one Month, for a certain Sum of Money agreed upon between them, assumed upon himself, and then and there faithfully promised the same (*Plaintiff*) that in Case the last mentioned Horse should become damaged by him the said (*Defendant*) then he would pay to the same (*Plaintiff*) for the same Horse six Pounds six Shillings: And the same (*Plaintiff*) avers, that within the Time which the aforesaid (*Defendant*) had and kept the last mentioned Horse for his Use and in his Possession, on the last mentioned Hire, that the said (*Defendant*) rode the last mentioned Horse so speedily and irregularly, and so inordinately and immoderately worked him, and broke and maimed his Knees, that the last mentioned Horse, at the Time which the aforesaid (*Defendant*) ought to redeliver him to the same (*Plaintiff*) to wit, the eighteenth Day of *September* in the Year of our Lord aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, was greatly damaged, lame, hurt and worsted, and became of little and almost of no Value to him the said (*Plaintiff*): Yet the aforesaid (*Defendant*) not regarding, (as in others).

Against

*Against an Executor for Mason's Work
done, Materials found, and Goods
sold and delivered.*

Middlesex, to wit, **J.** *P.* complains of *A. P.* Ex-
ecutor of the last Will
and Testament of *W. P.* Gentleman, deceased,
in the Custody of the Marshal, &c. for that,
to wit, That **whereas** the aforesaid *W.* in his
Life-time, on the second Day of *May* in the
Year of our Lord One thousand seven hun-
dred and thirty-two, at *Westminster* in the
County of *Middlesex*, in Consideration that
the same *J.* at the special Instance and Re-
quest of the aforesaid *W.* had made and per-
formed for the aforesaid *W.* in his Life-time,
diverse Mason's Work, and had found and pro-
vided Materials and Things necessary therein,
and also had sold and delivered to the same
W. divers Goods, Wares and Merchandizes,
assumed upon himself, and then and there faith-
fully promised the same *J.* that he the aforesaid
W. would well and truly pay and content to
the same *J.* so much Money as the same *J.*
reasonably deserved to have for the said Ma-
son's Work, Materials found, and the Goods,
Wares and Merchandizes sold and delivered as
aforesaid, when he the said *A. P.* in his Life-
time should be afterwards thereto requested:
And the same *J.* avers, that he reasonably de-
served to have for the said Mason's Work,
Materials found, and the Goods sold and deli-
vered as aforesaid, twenty-five Pounds, where-
of the aforesaid *W.* in his Life-time, to wit,
the — Day of — in the Year abovesaid,

King's
Bench.

at *Westminster* aforesaid, had Notice: And whereas also the aforesaid *W.* in his Life-time, to wit, the third Day of *July* in the Year aforesaid, at *Westminster* aforesaid, was indebted to the same *J.* in other twenty-five Pounds for diverse other Mason's Work by him *J.* for the aforesaid *W.* and at his Request before that Time done and performed, and for Materials and Things necessary thereunto by him found and provided; and also in twenty Pounds for divers Goods, Wares and Merchandizes by the aforesaid *W.* of the aforesaid *J.* before that Time bought and had; and so being thereof indebted the aforesaid *W.* in Consideration thereof afterwards in his Life-time, to wit, the Day and Year aforesaid, at *Westminster* aforesaid, assumed upon himself, and then and there faithfully promised the same *J.* that he the aforesaid *W.* would well and truly pay and content to the same *J.* the said last mentioned Sum of Money, when he should be afterwards requested thereto: Yet the aforesaid *W.* in his Life-time, and the aforesaid *A.* after the Death of him the said *W.* not at all regarding the aforesaid several Promises and Assumptions of the aforesaid *W.* but contriving and fraudulently intending him the said *J.* in this Behalf craftily and subtilly to deceive and defraud, the aforesaid several Sums of Money, or any Part thereof, to the same *J.* although afterwards often requested, have not paid, or any Way contented, but have hitherto absolutely refused to pay it to him, and the aforesaid *A.* still refuses to pay it to him, to the Damage of the said *J.* forty Pounds; And thereof he brings his Suit, &c.

Against

Against the Marshal for an Escape.

Middlesex, to wit, **T** Thomas Billingsley, Gentleman, complains of William Mullins, Esq; Marshal of the Marshalsey of the Lord the King before the King himself, being present here in Court in his proper Person, for that, to wit, That **whereas** at the Time of exhibiting the Bill hereafter mentioned, and long before, and always afterwards, the same William was and still is Marshal of the Marshalsea of the Lord the King before the King himself, and by Reason thereof for the same Time had the Keeping of the Prison of the said Lord the King of the King's Bench, and of all the Prisoners committed to the same Prison by him in that Prison to be safely kept, until such Prisoners out of his Custody should be discharged by due Form of Law, that Prison then and still being kept at Southwark in the County of Surrey: **And whereas** at the Time of exhibiting that Bill one Arthur Annesley, was actually in the Custody of him the said William, Prisoner in the Prison aforesaid, there charged in Custody of him the said William Marshal of the Marshalsea aforesaid, at the Suit of the said Thomas, and so being in that Prison the same Thomas Billingsley at some other Time, to wit, in the Term of the Holy Trinity in the sixth Year of the Lord the now King, in the Court of him the Lord the King before the King himself, at Westminster in the County of Middlesex aforesaid, in due Form of Law, by Bill

E e 3

without

King's
Bench.

without the Writ of the said Lord the King impleaded the same *Arthur*, so in Custody of the aforesaid *W.* (the same *W.* then and still being Marshal of the *Marshalsea* aforesaid) in a certain Plea of Trespas upon the Case, upon Promise, and for the Non-performance thereof, to the Damage of the said *Thomas* forty Pounds: And thereof hath brought his Suit, whereof the aforesaid *William* then and there had Notice in like Manner: And such were the Proceedings therein, That afterwards, to wit, in the Term of St. *Hillary* then next following, It was considered by the same Court here, that the aforesaid *Thomas* should recover against the aforesaid *A.* twenty-eight Pounds, as well for his Damages which the same *T.* had sustained as well by Occasion of the Non-performance of the said Promise, as for his Costs and Charges by him about his Suit in that Behalf put unto, whereof the same *A.* is convicted; which said Judgment still remains in the Court here unreversed, disannulled or satisfied, as by the Record thereof here in Court, to wit, at *Westminster* aforesaid, remaining more fully appears: And the same *T.* intended to have charged the same *A.* in the Prison aforesaid, under the Custody of the aforesaid *W.* in Execution for the Damages, Costs and Charges aforesaid so recovered: But the aforesaid *William*, being as is aforesaid Marshal of the *Marshalsea* aforesaid, not regarding the Duty of his Office, but designing and intending the same *T.* in this Behalf unjustly to oppress, and of his proper Remedy for the levying his Damages, Costs and Charges aforesaid by him, as aforesaid recovered to obstruct and hinder

hinder, and also altogether to deprive him thereof, after that the same *T.* had so exhibited his Bill, and before that the same *T.* had charged the same *A.* in Execution upon that Judgment, to wit, the 11th Day of *May* in the sixth Year of the Reign of the Lord the now King, at *Westminster* aforesaid in the County of *Middlesex* aforesaid, without the Leave and against the Will of him the said *T.* (the same *T.* of the Money by him as aforesaid recovered, or any Parcel thereof, then or still not being paid or satisfied) without the Leave and against the Will of the said *T.* suffered the same *A.* to escape voluntarily and go at large where he would; and the same *A.* always afterwards withdrew and himself absconded to Places altogether unknown to the same *T.* and still in such Places unknown to the same *T.* wanders, skulks and conceals himself, so that he could not, nor still cannot be charged or taken in Execution upon the Judgment aforesaid, by which the same *Thomas* is very likely to lose wholly the Benefit of his Judgment aforesaid, and to be disappointed of all Remedy for obtaining the Money aforesaid so as aforesaid recovered, to the Damage of him *T.* 40*l.* And thereof he brings his Suit, &c.

Against an Innkeeper for losing the Goods of his Guest.

Middlesex, to wit, **T**homas Johnson complains of John Simpson in Custody of the Marshal, &c. for that, to wit, that **whereas** according to the Law and Custom

Declarations in Case.

Custom of the Reign of the Lord *William*, late King of *England*, Innkeepers, who hold and keep common Inns to entertain Men, in Parts where such Innkeepers are by Night and Day obliged to keep the Goods and Chattels being within those Inns, of them as well going into as returning from the same Inns, without pilfering and Loss, so that in Defect of the said Innkeepers or their Servants Damage may not any Way happen to such Guests: **And** **Whereas** the aforesaid (*Defendant*) before the eleventh Day of *April* in the sixth Year of the Reign of the Lord the now King, keeping a certain common Inn, having a Sign, which said Inn is called the *Bull* in the *Strand* in the Parish, &c. in the said County of *Middlesex*, one *W. T.* a Servant of the said (*Plaintiff*) and having a Trunk locked (the Goods of him (*Plaintiff*) being in the same Trunk to the Value of 100*l.*) as his Guest in the same Inn entertained, but certain Malefactors, on the aforesaid eleventh Day of *April* in the sixth Year abovesaid, the Trunk, with the aforesaid Goods of him (*Plaintiff*) being in the same Trunk in the aforesaid Inn of him (*Defendant*) then likewise being at the Parish aforesaid in the County aforesaid found, by the Negligence of the aforesaid (*Defendant*) and his Servants, in Custody of the Trunk aforesaid, took, carried away and converted to their own proper Use, and other Wrongs to him did, against the Law and Custom aforesaid: Wherefore the same (*Plaintiff*) saith that he is injured, &c.

Against

King's
Bench.

Against an Attorney and others, for issuing a Capias ad Satisfaciendum on a Judgment, without the Assent of the Plaintiff.

York, to wit, **N**. S. complains of J. M. in Custody of the Marshal of the Marshalsea of the Lord the King before the King himself being, for that, to wit, That ~~whereas~~ as he the same (*Defendant*) heretofore, to wit, in the Court of the Lord the now King, to wit, in the Term of St. Michael in the fourth Year of the Reign of the Lord the now King, out of his Malice and Envy contriving and maliciously intending the same (*Plaintiff*) against all Right to oppress, injure and impoverish, did prosecute and procure to be prosecuted out of the Court of the said Lord the King here before the King himself, (the same Court then being at *Westminster* in the County of *Middlesex*,) in the Name of one T. W. without the Assent, Consent or Agreement of the same T. W. a certain Writ of the said Lord the King of *Capias ad Satisfaciendum* against the aforesaid *Plaintiff*, directed to the then Sheriff of *Middlesex*, by which said Writ the same Lord the King commanded the same then Sheriff of *Middlesex*, that the same Sheriff should take him the said (*Plaintiff*) if he might be found in his Bailiwick, and should keep him in safe Custody, so that he might have his Body before the said Lord the King at *Westminster*, on Monday next after the Octave of St. Hilary then next following, to satisfy unto the aforesaid

King's
Bench.

aforesaid *T. W.* for twenty-seven Pounds of Debt, and also forty three Pounds for his Damages which he had sustained as well by Occasion of the Detention of that Debt, as for his Costs and Charges by him laid out about his Suit in that Behalf, whereof the same (*Plaintiff*) was convicted: Which said Writ the same (*Defendant*) out of his Malice and Envy aforesaid afterwards, to wit, on the nineteenth Day of *December* in the Year aforesaid, at the Parish of *St. Andrew Holborn* in the County of *Middlesex* aforesaid, to the same then Sheriff of *Middlesex* maliciously, and for the Vexation and Trouble of him the said (*Plaintiff*) without the Consent and Assent, or Agreement of him the said *T. W.* caused to be delivered in Form of Law to be executed; by Virtue of which said Writ the same then Sheriff of *Middlesex* afterwards, and before the Return of the same Writ, to wit, the aforesaid nineteenth Day of *December* in the Year aforesaid, at the Parish, &c. in the County of *Middlesex* aforesaid, made his certain Warrant under the Seal of the Office of him the aforesaid then Sheriff, directed to one *Edward Chase*, then being Bailiff of the Liberty of the Dean and Chapter of the Cathedral Church of *St. Paul, London*, in the County of *Middlesex* aforesaid, and then and there having the Return and Execution of Writs within the Liberty aforesaid; by which said Warrant the aforesaid then Sheriff of the County of *Middlesex* gave in Charge to the aforesaid *E. C.* then being Bailiff of the Liberty aforesaid (that Liberty being within the County of *Middlesex*,) that he should take the aforesaid (*Plaintiff*) if
he

he should be found in his Bailiwick, and him ^{King's} safely, &c. so that he might, have his Body Bench. before the said Lord the King at *Westminster*, on *Monday* next after the Octave of *St. Hilary* then next following, to satisfy unto the aforesaid *T. W.* a Debt of twenty-seven Pounds, and also forty-three Pounds as well for his Damages which he sustained, &c. as for his Costs, &c. whereof he was convicted, &c. Which said Warrant afterwards, and before the Return of the same Writ, to wit, the aforesaid nineteenth Day of *December* in the Year abovesaid, at the Parish, &c. to the aforesaid *E. C.* by the aforesaid (*Defendant*) out of his Malice and Envy aforesaid, was delivered, or caused to be delivered, in Form of Law to be executed; by Virtue of which said Warrant the aforesaid *E. C.* afterwards, and before the Return of the Writ and Warrant aforesaid, to wit, the seventh Day of *January* in the Year abovesaid, at the Parish of *St. Andrew Holborn* aforesaid in the County of *Middlesex* aforesaid, within the aforesaid Liberty of the said Dean and Chapter of the Cathedral Church of *St. Paul, London*, aforesaid in the County of *Middlesex* aforesaid, took and arrested the aforesaid (*Plaintiff*) for the Cause aforesaid, and him the said (*Plaintiff*) under his Custody by Virtue of the Warrant aforesaid to him the aforesaid *Edward Chase* as aforesaid directed, from the aforesaid seventh Day of *January* in the fourth Year of the Reign of the said Lord the King abovesaid, at the Parish of *St. Andrew Holbourn* in the County of *Middlesex* aforesaid within the Liberty aforesaid, had and detained; and him the said (*Plaintiff*) for the Space of three Weeks then next following, had and detained: By Occasion of which
said

Declarations in Case.

said Caption, Arrest and Detention of him the said (*Plaintiff*) out of the Malice and Envy of the aforesaid (*Defendant*) so, as is aforesaid, there caused and procured, not only several difficult Businessses of him (*Plaintiff*) at the Time of the taking Arrest and Detention of him (*Plaintiff*) there to be gone through by Occasion thereof remained undone; but also the same (*Plaintiff*) several great Sums of Money by Occasion thereof there was compelled and forced to expend and lay out, to the extream impoverishing of him the said (*Plaintiff*) and of his whole Family: Wherefore the same (*Plaintiff*) saith that he is injured, and hath Damage to the Value of one thousand Pounds; And thereof he brings his Suit, &c. Pledges, &c.

For causing a Man to be arrested and held to Bail without Cause.

York, to wit, **J**oseph Nicholls complains of John Legard, being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that, to wit, That **whereas** on the seventh Day of *September* in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great Britain*, &c. at *Pontefract* in the County aforesaid, the aforesaid *John* contriving Malice, and maliciously and fraudulently intending to oppress and impoverish the same *Joseph*, and cause him *Joseph* to be arrested at the Suit of the aforesaid *John*, and to deter the Friends and Neighbours of him the said *Joseph* from becoming bound for the Appearance of the
aforesaid

aforesaid *Joseph*, with an Intent that the afore- King's
said *Joseph* should be detained in Prison for Bench.
want of Security for his Appearance, and
moreover, that he should be bereaved and de-
prived of his Liberty without any just Cause,
falsly, and maliciously, and fraudulently caused
and procured the same *Joseph*, in the Name of
the aforesaid *J.* by Virtue of a certain War-
rant of *John Ramsden*, Esq; then Sheriff of
York, under the Seal of his Office of Sheriff
sealed, bearing Date the first Day of *August*
in the Year aforesaid, pretended to be made
by the same Sheriff upon a certain Writ of the
said Lord the now King of *Latitat* issuing out
of the Court of the said Lord the King before
the King himself, at *Westminster* in the County
of *Middlesex*, to answer unto the aforesaid *J.* of
a Plea of Trespass, and also of a Bill of him the
said *J.* against the said *Joseph* for one hundred
Pounds Debt, according to the Custom of the
same Court to be exhibited, to be arrested and
imprisoned, and in Prison to be detained for
the Space of four Weeks, when in Truth the
aforesaid *John*, at the Time of the Arrest and
Imprisonment aforesaid, had not any just Cause
of Action against the aforesaid *Joseph*; by
which diverse difficult Business of him the said
Joseph for the Time aforesaid wholly remained
undone: And the aforesaid *Joseph* was forced
and compelled to pay several great Sums of
Money for his Deliverance from his Imprison-
ment aforesaid: Wherefore the same *Joseph*
saith that he is the worse, and hath Damage
to the Value of one hundred Pounds; And
thereof brings his Suit, &c.

For

King's
Bench.

For locking up a Gate, and thereby stopping up a Way, so that the Plaintiff could not get to her Coal-Pit. Brought by the Plaintiff's next Friend.

York, to wit, **B**E it remembered, that heretofore, to wit, in the Term of *Easter* last past, before the Lord the King at *Westminster* came *Catherine Stringer the Younger*, who is under the Age of twenty-one Years, by *Catherine Stringer the Elder*, who is admitted by the Court of the Lord the King here to prosecute for the same *Catherine Stringer the Younger*, as the next Friend of her the said *Catherine the Younger*, and brought here into the Court of the said Lord the King now here her certain Bill against *R. W. Baronet, C. W. Gent. R. F. and R. W.* in Custody of the Marshal, &c. of a Plea of *Trespas* upon the Case, &c. And the Pledges of prosecuting are *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, **York**, to wit, *Catherine Stringer the Younger*, who is under the Age of one and twenty Years, by *Catherine Stringer the Elder*, who is admitted by the Court of the Lord the King here to prosecute for the same *C. the Younger*, as the next Friend of her the said *C. the Younger*, complains of *R. W. Bart. E. W. Gent. R. F. and R. W.* being in the Custody of the Marshal of the *Marshalsea* of the Lord the King before the King himself, for that, to wit, That whereas the same *C. S. the Younger*,

ger, on the fifteenth Day of *April* in the fifth Year of the Reign of the Lord *George* the Second, now King of *Great Britain, &c.* and long before, and from thence hitherto hath been, and now is seised of a certain Coal-Mine in *Sharlston* in the County aforesaid, lying and being in a certain great Field there, called *Sharlston-Field*, in her Demesne as of Fee. And whereas also very many of the Subjects of the Lord the King, buying and willing to buy Coals at the Coal-Mine aforesaid, conveniently may, and are accustomed to come to, and pass over, in, by and over the common King's Way, leading in and by a certain Passage, called *Fowleby-Lane* in *Fowleby* in the County aforesaid, and from thence unto the Field aforesaid, with their Carts and Carriages, to the Coal Mine of the said C. aforesaid, and the Coals there bought and got from thence by the same Way to bring and carry away; and the same C. and her Servants conveniently may, and have been accustomed to pass over, in, and by the same Way, with their Carts and Carriages, for the necessary and convenient Trade of the said Coal-Mine to that Coal-Mine, and from the same: Yet the aforesaid (*Defendants*) not ignorant of the Premises, but contriving, and maliciously intending her the said C.S. the Younger, against all Right to oppress and to hinder and deprive her of the Profit of her Coal-Mine aforesaid, on the aforesaid fifteenth Day of *April* in the fifth Year aforesaid, and at divers Days and Times between the same Day and the Day of Exhibiting of the Bill of the said C. the Younger, to wit, daily, and every Day within that Time

King's
Bench.

at

Declarations in Case.

at *F.* aforesaid, obstructed and stopt up the Way aforesaid, by the setting up and keeping shut a certain Gate across the Way in the Passage aforesaid, and have kept, held, and continued obstructed, stopt, and set up; so that not only the same *C. the Younger* with her Carts and Carriages for the necessary and convenient Trade of her Coal-Mine was hindered for the same Time to pass over thereto by the same Way, but also several Persons, to wit, *S. C. W. F. I. W. R. W. and P. W.* and several other Persons, who would buy Coals at the Coal-Mine of the said *C. the Younger*, and bring and carry them from thence by the same Way, if the said Way had been open, would not, and refused to buy Coals at the Coal-Mine aforesaid, and got, and bought great Quantities of Coals elsewhere; and so the same *C. the Younger*, lost the Profit of the said Coal-Mine, for the whole same Time, to the Damage of her the said *C. the Younger* 100 *l.* And therefore brings her Suit, &c.

For rescuing Goods levied on a Fieri Facias, issuing out of the Court of Common Pleas.

York, to wit, **N.** *S.* complains of *James Murgatroyd, S. B. T. R. J. G. W. C. and T. M.* in Custody of the Marshal of the Marshalsea of the Lord the King before the King himself being, for that, to wit, That **whereas** he the same (*Plaintiff*) heretofore in the Court of the Lord the now King, to wit, in the Term of *St. Michael,*

chael in the fifth Year of the Reign of the said King's Lord the now King before Sir *Robert Eyre*, Knt. Bench. and his Companions, then Justices of the said Lord the King of the Bench at *Westminster* in the County of *Middlesex*, by the Consideration of the same Court had recovered against *W. M.* late of *R.* in the County of *York* aforesaid, Gent. *H. M.* late, &c. and *T. M.* late of, &c. as well a certain Debt of 3000 *l.* as 15 *l.* which were adjudged to the same (*Plaintiff*) in the Court of the said Lord the King of the Bench for his Damages which he had sustained by Occasion of the Detention of that Debt, and whereof they are convicted, as by the Record and Process thereof, in the same Court of the Bench aforesaid before the Justices of the same Bench at *Westminster* aforesaid remaining, more fully appears. And whereas also the same (*Plaintiff*) for the obtaining of the Debt and Damages aforesaid, afterwards, to wit, the twelfth Day of *February* in the fifth Year of the Reign of the said Lord the now King, prosecuted out of the Court of the Bench aforesaid at *Westminster* in the County of *Middlesex* a certain Writ of the said Lord the King, directed to the then Sheriff of *York*, to cause to be levied Two thousand nine hundred and ninety-nine Pounds, Parcel of the Debt aforesaid, and seventeen Pounds for the Damages aforesaid of the Lands and Chattels of the aforesaid (*Defendant*); by which said Writ of the said Lord the King the same Sheriff of *York* was commanded, that of the Lands and Chattels of the aforesaid (*Defendant*) in his Bailiwick, he cause to be made Two thousand nine hundred eighty and

King's
Bench.

eight Pounds, Parcel of the Debt aforesaid, and Three hundred seventeen Pounds for the Damages aforesaid, in Form aforesaid recovered. And that he should have that Money before the Justices of the said Lord the King at *Westminster* in fifteen Days from the Day of *Easter*, to be rendered unto the aforesaid (*Plaintiff*) of the Debt and Damages aforesaid, whereof they were convicted. And that he should have there then that Writ, which said Writ, the aforesaid (*Plaintiff*) afterwards, and before the Return of the same, to wit, the twenty-second Day of *March* in the Year abovesaid, at the City of *York* in the County of *York* aforesaid, delivered to one *P. M.* Knight, then being Sheriff of *York* aforesaid, in Form of Law to be executed; by Virtue of which said Writ afterwards, and before the Return of the same, on the Twenty-fourth Day of *March* in the Year last abovesaid at the City of *York* aforesaid, the aforesaid *P.* then being Sheriff of the County of *York* aforesaid, took and seized into his Hands divers Goods and Chattels of the aforesaid (*Defendant*) to the Value of 2988 *l.* Parcel of the Debt and Damages aforesaid, and of the same Goods and Chattels intended to cause to be made so much of the said 2988 *l.* of the Debt and Damages aforesaid, and then had the same Goods and Chattels in his Hands, until the aforesaid (*Defendant*) afterwards, to wit, the aforesaid Twenty-fourth Day of *March* in the Year last abovesaid at, &c. by Force and Arms, &c. together with the said *S. B. T. R. J. G. W. C.* and *T. M.* took and rescued the Goods and Chattels aforesaid out of the Hands and Custody of the aforesaid

said *P. M.* and the same took and carried away King's
to divers Places unknown, so that the aforesaid Bench.
then Sheriff could not cause to be made the
Debt and Damages aforesaid of the same Goods
and Chattels, by which the same (*Plaintiff*) is
deprived of his Debt and Damages aforesaid,
and hath wholly lost the same: Wherefore the
same (*Plaintiff*) saith, that he is the worse,
and hath Damage to the Value of 3000*l.* And
thereof brings his Suit, &c.

*For warranting Weather Sheep sound,
when they were rotten and infected.*

Middlesex, to wit, **A.** *B.* complains of *J. D.*
in Custody of the
Marshal, &c. for that, to wit, That **whereas**
the same (*Plaintiff*) on the eighth Day of *Octo-*
ber in the sixth Year of the Reign of the Lord
George the Second, now King of *Great Britain*
at *Westminster* in the County of *Middlesex*
aforesaid, bargained with the aforesaid (*Defen-*
dant) to buy of the aforesaid (*Defendant*) one
hundred Weather Sheep, the aforesaid (*De-*
fendant) then and there knowing the Weather
Sheep aforesaid to be unsound and infected
with the Disease called the Rot, falsely and
fraudulently bargained and sold the said one
hundred Weather Sheep to the same (*Plaintiff*)
warranting them sound the same Day and Year
abovesaid at *Westminster* aforesaid, for a great
Sum of Money, to wit, for 20*l.* of lawful Mo-
ney of *Great Britain*, which said Weather
Sheep then were unsound and infected with

Declarations in Case.

the aforesaid Disease called the Rot, and Forty of those Weather Sheep died of that Disease, and the Residue of them were putrid and infected, and became of no Value to the same (*Plaintiff*): Wherefore the same (*Plaintiff*) saith, that he is injured and hath Damage to the Value of 30 *l.* And thereof brings his Suit, &c.

For selling another Man's Cow, warranting it to be his own.

Middlesex, to wit, **A.** B. complains of C. D. in the Custody of the Marshal, &c. for that, to wit, That **whereas** the same (*Plaintiff*) the Ninth Day of *October* in the sixth Year of the Reign of the Lord George now King of Great Britain, &c. at *Westminster*, bargained with the aforesaid (*Defendant*) to buy from the same (*Defendant*) a certain Cow, the aforesaid (*Defendant*) knowing the Cow aforesaid to be the Cow of one R. N. falsely and fraudulently then and there sold the same to him (*Plaintiff*) warranting the same Cow as the (*Defendant's*) own proper Cow, for a great Sum of Money to be paid to the aforesaid (*Defendant*) by the aforesaid (*Plaintiff*); and afterwards, to wit, the Day and Year abovesaid at *Westminster* aforesaid, the aforesaid R. N. took and carried away that Cow as his own proper Cow from the same (*Plaintiff*), and so the aforesaid (*Defendant*) hath deceived and defrauded the said (*Plaintiff*) to the Damage of him the said (*Plaintiff*) 10 *l.* And therefore he brings his Suit, &c.

For

For selling corrupt Malt.

Lincoln, to wit, **A.** *B.* complains of *Philip*
A. *P.* in Custody of the
Marshal, &c. for that, to wit, That **whereas**
the same (*Plaintiff*) the first Day of *June* in
the sixth Year of the Reign of the Lord *George*
the Second, now King of *Great Britain*, &c.
and for a long Time then last past, was a Brewer
of hopped Beer at *F.* in the County aforesaid,
and for the whole Time aforesaid made good and
wholesome hopped Beer of good and sound
Malt, and the same Beer sold and uttered to
divers of the King's loyal Subjects, as well in
the Suburbs of the City of *Lincoln*, as in di-
vers Villages thereabouts, inhabiting and
having Families, and by Means thereof the same
(*Plaintiff*) gained and got good Gain and Pro-
fit towards the Maintenance of himself and
Family : **And whereas also** the afore-
said (*Defendant*) the same Day and Year
abovesaid at *F.* aforesaid in the County a-
foresaid sold Two hundred Quarters of good,
sound, and Merchantable Malt, to make hop-
ped Beer with the same Malt, to be deli-
vered to the same (*Plaintiff*) at a certain
Wharf called *Peel* in the County of *Surry*,
at such Times as the same (*Plaintiff*) should
send to the aforesaid (*Defendant*) for the same,
he the same (*Plaintiff*) paying to the aforesaid
(*Defendant*) for every Score of Malt, so as
aforesaid sold, and to be delivered, 23 *l.* law-
ful Money of *Great Britain*, amounting in

King's
Bench.

the whole to 230 *l.* whereof 200 *l.* by him the said (*Plaintiff*) were to be paid to the Hands of the aforesaid (*Defendant*) before *Sturbridge* Fair then next following, and in Part of the Performance of the Bargain aforesaid the same (*Defendant*) delivered to the same (*Plaintiff*) One hundred and twenty-five Quarters of Merchantable Malt, to wit, at the Wharf aforesaid; yet the same (*Defendant*) maliciously contriving, and fraudulently intending him (*Plaintiff*) craftily and subtilly to deceive and defraud of the Residue of the Bargain of Malt aforesaid, afterwards, to wit, the last Day of *July* in the Year abovesaid, and the twentieth Day of *October* next following at the Wharf aforesaid, delivered to the same (*Plaintiff*) Seventy-five Quarters of bad and corrupt Malt, the Residue of the aforesaid Two hundred Quarters of Malt, so as aforesaid agreed for, the same (*Defendant*) knowing the seventy-five Quarters of Malt, Residue of the aforesaid Two hundred Quarters of Malt aforesaid, to be unwholesome and corrupt; and he the said (*Plaintiff*) not knowing the Corruption of the same Seventy-five Quarters, so as aforesaid delivered to him, the said (*Plaintiff*) that corrupt Malt afterwards, to wit, the first Day of *November* in the Year abovesaid, at *F.* aforesaid, brewed and converted into hopped Beer, and the hopped Beer so brewed and made of the same bad and corrupt Malt, became unwholesome and corrupt; by Means whereof the said (*Plaintiff*) in selling and uttering the aforesaid unwholesome hopped Beer, so as aforesaid brewed and made of the bad
Malt,

Malt, to several Subjects of the said Lord the King's King, now inhabiting in and near *Lincoln a. Bench.* fore said, to whom the same (*Plaintiff*) before used and was accustomed to sell and utter good and wholesome hopped Beer, not only falls into great Disgrace, but also the same (*Plaintiff*) for that Cause of the hopped Beer aforesaid, being so as aforesaid by him made and brewed of the aforesaid bad and corrupt Malt, hath wholly lost to the Value of 120 l. to the Damage of him (*Plaintiff*) 200 l. And therefore he brings his Suit, &c.

For Chandler's Goods bought by Husband and Wife, and sold by Wife when sole.

Middlesex, to wit, **B**E it remembered, *Against an Attorney.* That on *Wednesday* next after fifteen Days of *Easter* that same Term, before the Lord the King at *Westminster* came *J. C. and E.* his Wife, by *Josias Fitchet* their Attorney, and exhibited into the Court of the said Lord the now King here their certain Bill against *H. H.* Gentleman, one of the Attornies of the Court of the Lord the King before the King himself, being present here in Court in his proper Person, of a Plea of Trespass upon the Case; and the Pledges of prosecuting are *John Doe* and *Richard Roe*; which said Bill follows in these Words, to wit, *Middlesex*, to wit, *J. C. and E.* his Wife complain of *H. H.* Gentleman, one of the Attornies

King's
Bench.

nies of the Court of the Lord the King before the King himself, being present here in Court in his proper Person, for that, to wit, That **whereas** the aforesaid *H.* the twenty-seventh Day of *January* in the Year of our Lord One thousand seven hundred and thirty-one, at the Parish of *St. Andrew Holborn* in the County of *Middlesex*, in Consideration that the same *Elizabeth* (whilst she was sole) at the special Instance and Request of the aforesaid *H.* had sold and delivered to the same *H.* from Time to Time, and at several Times, for the Space of one Year and more then last past, (the same *Elizabeth* then, and for the whole Time aforesaid being and exercising the Trade or Business of a Chandler,) divers Quantities of Tea, Sugar, Coffee, Butter, Salt, Small-beer and Candles, for the Sustenance and Support of him the said *H.* and his Family, assumed upon himself, and then and there faithfully promised the same *Elizabeth*, that he the aforesaid *H.* so much Money as the same *E.* for the aforesaid Tea, Sugar, Coffee, Butter, Salt, Small-beer and Candles aforesaid reasonably deserved to have at the Time of the Sale and Delivery of the same to the same *Elizabeth* (whilst she was sole) when he should be there-to afterwards required, would well and truly pay and content: And the same *J.* and *E.* aver, that she the same *E.* (whilst she was sole) and at the Time of the Sale and Delivery of the same Tea, Sugar, Coffee, Butter, Salt, Small-beer and Candles aforesaid, for the same reasonably deserved to have of the same *H.* twelve Pounds of lawful Money of *Great Britain*,

tain, whereof the aforesaid *H.* afterwards, to King's
 wit, the same Day and Year, at the Parish a- Bench.
 foresaid of the same *E.* (whilst she was sole)
 then and there had Notice: **And whereas**
 the aforesaid *H.* afterwards, to wit, the twenty-
 eighth Day of *January* in the Year of our
 Lord one thousand seven hundred and thirty-
 one aforesaid, at the Parish aforesaid, was in-
 debted to the same *E.* (whilst she was sole)
 in other twelve Pounds of like lawful Money
 of *Great Britain*, for divers other Quantities
 of Tea, Sugar, Coffee, Butter, Salt, Small-
 beer and Candles of her *E.* and by the same
E. whilst she was sole) then being a Chand-
 ler to the same *H.* and at the special Instance
 and Request of him *H.* for other Sustenance
 and Support of him *H.* and his Family afore-
 said, before that Time sold and delivered; and
 being so thereof indebted the aforesaid *H.* in
 Consideration thereof afterwards, to wit, the
 same twenty-eighth Day of *January* in the
 Year abovesaid, at the Parish aforesaid, assumed
 upon himself, and to the same *E.* then and
 there faithfully promised, that he the afore-
 said *H.* would well and truly pay and satisfy the
 same *E.* the said last mentioned Sum of twelve
 Pounds, when he should be thereof afterwards
 requested. **And whereas also** afterwards,
 to wit, the first Day of *February* in the Year
 of our Lord one thousand seven hundred and
 thirty-one abovesaid, at the Parish aforesaid in
 the County aforesaid, the aforesaid *H.* was in-
 debted to the same *J.* and *E.* in other twelve
 Pounds of lawful Money of *Great Britain*, for
 divers Goods, Wares and Merchandizes of her
 the

Declarations in Case.

the said *E.* (whilst she was sole) and by the same *E.* (whilst she was sole) to the same *H.* and at his special Instance and Request, before that Time sold and delivered; and the aforesaid *H.* being so thereof indebted he the same *H.* in Consideration thereof afterwards, to wit, the same first Day of *February* in the Year of our Lord one thousand seven hundred and thirty-one, abovesaid at the Parish aforesaid, assumed upon himself, and then and there faithfully promised the same *J.* and *E.* that he the aforesaid *H.* the aforesaid last mentioned twelve Pounds would well and truly pay and satisfy to the same *J.* and *E.* when he should be thereto afterwards requested: **And whereas** the aforesaid *H.* afterwards, to wit, on the same first Day of *February* in the Year of our Lord One thousand seven hundred and thirty-one abovesaid, at the Parish aforesaid in the County aforesaid, in Consideration that the aforesaid *E.* (whilst she was sole) at the special Instance and Request of him the said *H.* had before then sold and delivered to the said *H.* divers other Goods, Wares and Merchandizes of her the said *E.* (whilst she was sole) assumed upon himself, and then and there faithfully promised the same *J.* and *E.* to pay them so much Money as the same Goods, Wares and Merchandizes last mentioned were reasonably worth at the Time of the Sale and Delivery of the same, when he should be thereof afterwards requested: And the same *J.* and *E.* aver, That the aforesaid Goods, Wares and Merchandizes last mentioned,

tioned, at the Time of the Sale and Deli-
 very of the same were reasonably worth o-
 ther twelve Pounds of like lawful Money of King's Bench.
Great Britain, whereof the same *H.* after-
 wards, to wit, the same Day, Year and Place
 last abovesaid, had Notice: **And whereas**
 also the aforesaid *H. J.* and *E.* afterwards,
 to wit, the third Day of *February* in the Year
 of our Lord One thousand seven hundred
 and thirty-one abovesaid, at the Parish afore-
 said in the County abovesaid, accounted to-
 gether among themselves of and concerning
 divers Sums of Money to the same *E.* (whilst
 she was sole) by the aforesaid *H.* before that
 Time due, and then being in Arrear and un-
 paid: And upon that Account the aforesaid
H. was then and there found in Arrear to-
 wards the same *E.* (whilst she was sole) in
 three Pounds Six-pence and one Farthing of
 lawful Money of *Great Britain*; and so being
 thereof found in Arrear the aforesaid *H.* in
 Consideration thereof afterwards, to wit, the
 same Day and Year last abovesaid, at the
 Parish abovesaid in the County abovesaid, as-
 sumed upon himself, and then and there
 faithfully promised the same *J.* and *E.* that
 he the same *H.* the aforesaid three Pounds
 Six-pence and one Farthing to the same *J.*
 and *E.* when he should be thereof afterwards
 required, would well and truly pay and con-
 tent: **Yet** the aforesaid *H.* not at all regard-
 ing his several Promises and Assumptions afore-
 said in Form abovesaid made, but contriving and
 fraudulently intending the same *E.* (whilst she
 was sole) and the same *J.* and *E.* after the Inter-
 marriage

Declarations in Case.

marriage between them celebrated, in this Behalf craftily and subtilly to deceive and defraud, the aforesaid several Sums of Money, or any Part thereof, to the same *E.* (whilst she was sole) nor to the same *J.* and *E.* after their said Marriage, although the aforesaid *H.* by the same *E.* (whilst she was sole) afterwards, to wit, the same twenty-eighth Day of *January* in the Year of our Lord abovesaid, and by the same *J.* and *E.* after their Marriage, to wit, the same third Day of *February* in the Year abovesaid, at the Parish aforesaid was required so to do, hath not paid, or any Ways contented for the same, but hath hitherto altogether refused, and still doth refuse to pay them, or either of them, or any Ways satisfy them, or either of them for the same, to the Damage of them the said *J.* and *E.* twenty Pounds; And thereof they bring their Suit, &c.

Plea.

And the aforesaid *H.* in his proper Person comes and defends the Force and Injury when, where, and as this Court shall think fit, and saith, that the aforesaid *J.* and *E.* his Wife ought not to have or maintain their Action aforesaid thereof against him, because he saith, That one *William Saunders* heretofore, to wit, in the Term of *Easter* in the third Year of the Reign of the Lord the now King, impleaded the same *E.* (whilst she was sole) in the Court of the Lord the now King, before Sir *Robert Eyre*, Knight, and his Companions, then Justices of him the Lord the King of the Bench at *Westminster*, in a certain Plea of Debt

Debt upon Demand for ten Pounds; and be- King's
cause the aforesaid *E.* came not in the afore-Bench.
said Court of the Bench aforesaid, to answer
to the same *William Saunders* in the Plea afore-
said, the same *E.* according to the Law and
Custom of this Kingdom of *England*, was put
into Exigent to be outlawed; and for that
Reason afterwards, to wit, *Saturday* next be-
fore the Feast of the Purification of the
Blessed Virgin *Mary* in the fourth Year of
the Reign of the said Lord the now King,
by due Course of Law at the Suit of the
aforesaid *William* was outlawed in *London*,
and still is outlawed at the Suit of the afore-
said *William*, so as by the Record and Pro-
ceedings thereof in the same Court of Bench
aforesaid returned and now remaining more
fully appears; which said Outlawry still in
its full Force, Strength and Effect remains,
not reversed or annihilated: And this he is
ready to justify by that Record: Wherefore he
prays Judgment, if the aforesaid *J.* and *E.*
ought to have or maintain their Action afore-
said thereof against him, &c.

And the aforesaid *J.* and *E.* say, That they,
for any Thing by the aforesaid *H.* above in
Pleading alledged, ought not to be precluded
from having their Action aforesaid thereof a-
gainst him, because they say, that the same
H. hath not any such Record of the Outlaw-
ry aforesaid in the aforesaid Court of the said
Lord the King of the Bench remaining, as he
the same *H.* above in Pleading hath alledged:
And this they are ready to justify by that
Record

King's
Bench.

Record, and it is given to the aforesaid *H.* by the Court of the said Lord the now King here, that he may have that Record before the Lord the King at *Westminster* — next after — at his Peril. The same Day is given to the Parties aforesaid there, &c.

*Upon a Bill of Exchange against the
Drawer.*

London, to wit, **C**ALEB Powel complains of *John Edwards* in Custody of the Marshal, &c. for that, to wit, That **whereas** the aforesaid *John Edwards*, on the eleventh Day of *May* in the Year of our Lord one thousand seven hundred and thirty-one, at *London*, in the Parish of the Blessed *Mary of the Arches* in the Ward of *Cheap*, was a Merchant there residing and trafficking, and one *Andrew Clark* the same Day and Year was a Merchant, and a Person residing and trading at *Knighton* in the County of *Radnor*, and the same *John* so being residing and trading in the said Parish and Ward aforesaid, he the same *John*, the same eleventh Day of *May* in the Year aforesaid, according to the Use and Custom of Merchants in that Case used and approved of from the Time whereof the Memory of Man is not to the contrary, made one Bill of Exchange in Writing, bearing Date the same Day and Year aforesaid, with the proper Hand and Name of him *John* subscribed, and directed the same Bill of Exchange to the aforesaid *Andrew Clark*,

Clark, by the Name of *Mr. Andrew Clark* King's
at *Knighton*; by which said Bill of Exchange Bench.
he the same *John* requested the aforesaid *Andrew*
to pay to the aforesaid *Caleb*, by the
Name of *Mr. Caleb Powell*, or Order, upon
Sight, fifty Pounds, Value received of him
the aforesaid *Caleb*. And the aforesaid *Caleb*
afterwards, to wit, the fifth Day of *September*
in the Year aforesaid, at *Knighton* aforesaid,
shewed the same Bill of Exchange to the a-
foresaid *Andrew*, and then and there requested
the aforesaid *Andrew* to pay the aforesaid Sum
of fifty Pounds in the Bill aforesaid mentioned
to the same *Caleb*, according to the Tenor
and Effect of the same Bill, which the aforesaid
Andrew absolutely refused to do. And the
aforesaid *Caleb* further avers, that the aforesaid
Sum of Money in the Bill aforesaid men-
tioned was not at any Time paid to the
aforesaid *Caleb*, or to his Order; of which
said Premisses the aforesaid *John* afterwards,
to wit, the twelfth Day of *September* in the
Year aforesaid, at *London* aforesaid in the
Parish and Ward aforesaid, had Notice; by
Reason of which said Premisses the aforesaid
John, according to the aforesaid Use and Cu-
stom of Merchants from the whole Time
aforesaid used, was charged and chargeable,
and still is chargeable to pay to the same
Caleb the aforesaid fifty Pounds in the Bill
of Exchange aforesaid contained: And being
so thereof charged and chargeable the aforesaid
John, in Consideration thereof afterwards,
to wit, the same Day and Year last aforesaid,
at *London* aforesaid in the Parish and
Ward

Declarations in Case.

Ward aforesaid, assumed upon himself, and then and there faithfully promised the same *Caleb*, that he the aforesaid *John* would well and truly pay and satisfy to the same *Caleb* the aforesaid fifty Pounds in the Bill aforesaid contained, when he should be thereof afterwards requested.

And whereas also, &c. (*for Money had and received.*)

And whereas also, &c. (*for Money borrowed and lent.*)

Yet, &c. (*as in other Declarations.*)

The End of the First Volume.

THE TABLE FOR THE KING'S BENCH.

A

A	Batement,	Page 103
	Acetiam Bill of <i>Middlesex</i> ,	34
	——— Latitat,	45
	<i>Actions</i> , Arrest and First Process,	22, &c.
	Admittance of a Guardian for an Infant,	100
	Affidavits on Bail being taken before Commissioners,	67
	——— Of Justification of Bail,	68
	——— Of the Cause of Action,	27 to 32
	——— To obtain a <i>Special Acetiam</i> in Assault,	32
	——— Of Service of Process,	58
	——— For Costs for not proceeding to Trial after Notice,	154
	——— Of Delivery of a Declaration in Ejectment,	281
	——— Of Delivery of a Declaration against a Prisoner,	299
	——— To change the <i>Venue</i> ,	69
	G 2	<i>Affidavit</i>

The T A B L E.

<i>Affidavit on a Plea in Abatement,</i>	Page 104
<i>Appearance by common Bail,</i>	47, 57
—— By special Bail,	47, 52
—— In Person,	55
<i>Arrest of Judgment,</i>	176, 204
<i>Assigning Bail-Bond,</i>	49
<i>Attachment of Privilege,</i>	223
<i>Attornies, Proceedings by and against them,</i>	24, 223
<i>Audita Querela,</i>	352
<i>Avowry,</i>	<i>ibid.</i>

B.

<i>Bail common,</i>	57
—— Special. In what Cases required,	22, 56
—— Taken before Commissioners,	62
<i>Bail-Bond to the Sheriff,</i>	47
—— Assigned to the Plaintiff,	49
—— Staying Proceedings thereon,	51
<i>Bail-Piece common,</i>	59
—— Special, before a Judge,	61
—— Special, before Commissioners,	62, 66
—— Special, on a <i>Certiorari</i> ,	226
—— On an <i>Audita Querela</i> ,	355
—— <i>Exoneretur</i> entered on surrendering the Defendant,	256
<i>Bail above, in what Time it must be put in,</i>	52
—— Exception to, and Justification,	53, 64
—— What Time they have to Surrender the Defendant,	256
—— Entry of Recognizance against the Bail,	260
<i>Bill of Middlesex,</i>	33
—— For Special Bail,	34
—— Note for Signing, and for the Office,	36
	<i>Non</i>

The T A B L E.

Non Omittas Bill,	Page 37
—— Entry thereof, to save the Statute of Limitations,	38
Breviates, Method of drawing them,	155, 292

C.

Capias,	342
—— Alias and Pluries Capias,	343
—— Ad Satisfaciendum,	205 to 212
Certiorari,	225
Chief Clerk,	16
Cities and Towns having a Sheriff or Sheriffs,	2
Clerk of the Nisi Prius,	17
—— Of the Essoins, &c.	ibid.
—— Of the Papers,	ibid.
—— Of the Declarations,	18
—— Of the Rules,	ibid.
—— Of the Errors,	19
—— Of the Bails,	ibid.
—— Of the Docquets,	19
—— In Chancery,	25
Committitur, and Entry thereof on the Roll.	301
Common Bail. See Bail.	
Continuances on Demurrer,	310
Counties of England and Wales,	1
Costs for not proceeding to Trial,	153
—— On a Demurrer,	129
—— Taxed on a Record,	177
Crier,	20
Custos Brevium,	17

D.

Declarations. Of drawing them,	68
—— Of delivering them,	55, 71
—— ——— To Prisoners,	296
G g 2	Decla-

The T A B L E.

<i>Declarations.</i> Of laying several Counts in one Declaration,	Page 94
— Of the Day in Declarations,	70
— In what County to be laid,	69
<i>Declaration</i> by a Clerk of the Office,	224
— Against an Attorney of the Court, <i>ibid.</i>	
— Against a Filacer,	192
— In Assault and Battery,	98
— In Assault, Battery and Imprisonment, <i>ib.</i>	
— For Goods sold and delivered,	83
— For Money laid out, lent, had and received,	85
— For Work done, and Materials found,	87
— For Cure of a Wound and for Medicines,	89
— On a promissory Note,	91
— On a Bond,	75
— An Assignment of the Sheriff's Bail-Bond.	77
— On a Bill penal,	81
— On a Bill without a Penalty,	82
— In Ejectment,	278
— In Ejectment by Original,	287
— On a <i>Mutuat</i> for a Judgment, by Warrant of Attorney,	182
— In <i>Replevin</i> ,	275
— In Trespass for breaking his Close,	97
— In Trover,	96
— On a promissory Note indorsed to another Person,	92
— On a violent Assault and Battery,	99
— On a <i>Scire Facias</i> ,	262
— On an Original,	344
— Rent in Arrear on a Lease,	276
— On an Agreement made upon an Assignment, at the Suit of an Administrator,	363
<i>Decla-</i>	

The T A B L E.

Declaration on an Inland Bill of Exchange,

Page 365

— For not delivering a Loading,	371
— Against a Warehouse-keeper, for Goods lost.	373
— For not taking <i>South-Sea</i> Stock sold,	376
— For living in a House on Sufferance,	379
— Against a High Bailiff for a false Return,	382
— On a Wager,	386
— For Goods sold and delivered, and upon two Notes, at the Suit of an Executor,	388
— For Coachmaker's Work and Materials found, against an Executor, at the Suit of Executors,	392
— For Bricklayer's Work and Materials found,	395
— For hindring a Tenant to take Posses- sion according to Lease Parol,	400
— For immoderate riding a Horse, contrary to Promise,	402
— For Money had and received to the Use of Plaintiff's Testator,	404
— For not saving a Man harmless, &c.	405
— By a Surgeon for curing a Wound,	409
— On a Note of Hand given by Defen- dant's Servant to Plaintiff's Husband in his Life-time,	411
— For not delivering Goods bought,	413
— For a Wager concerning a Horse-Race,	414
— On an Agreement for paying a Sum of Money, in case Defendant should hurt Plain- tiff's Horse,	416
— Against an Executor for Mason's Work done, &c.	419
— Against a Marshal for an Escape,	421

The T A B L E.

<i>Declaration</i> against an Innkeeper for losing the Goods of his Guest,	Page 423
— Against an Attorney for suing out of a <i>Ca. Sa.</i> without the Plaintiff's Consent,	225
— For causing a Man to be arrested and held to Bail, without Cause,	428
— For locking up a Gate, and stopping up a Way leading to Plaintiff's Coal-pit,	430
— For rescuing Goods levied by a <i>Fieri Facias.</i>	432
— For warranting Sheep sound, when they were rotten,	435
— For selling another Man's Cow, warranting it to be his own,	436
— For selling corrupt Malt,	437
— For Chandler's Goods bought by Husband and Wife, and sold by Wife when sole,	439
— Upon a Bill of Exchange against the Drawer,	446
<i>Demurrer</i> in Abatement to a Declaration,	303
— Joinder,	304
— In Bar to a Declaration,	305
— Joinder,	306
— To a Plea in Bar,	<i>ibid.</i>
— Joinder,	307
— To Plaintiff's Replication,	308
— Rejoinder,	<i>ibid.</i>
— To a Rejoinder by the Plaintiff,	309
— Entered on the Roll,	310
— For Causes,	303, 314
— To one Part, and Issue to the other Part,	317
— Costs on Demurrer,	129
<i>Distingas Furator'</i> for the Assizes,	142
— In London,	143
— In <i>Middlesex</i> ,	<i>ibid.</i>

Distingas

The TABLE.

<i>Distingas</i> for a View by Jurors,	Page 148
—— For a Trial at Bar,	144
—— By Original,	345
<i>Docquets</i> ,	198

E.

<i>Ejectment</i> , and Proceedings thereon,	278 to 295
—— <i>Proceeding thereon, by Original</i> ,	285
<i>Elegit</i> ,	217 to 220
<i>Error</i> out of the <i>Common Pleas</i> , returnable in the <i>King's Bench</i> ,	323
—— In the <i>King's Bench</i> , returnable in the <i>Exchequer Chamber</i> ,	327
—— <i>Quod coram vobis residet</i> ,	328
—— From <i>Ireland</i> ,	329
—— In <i>Parliament</i> ,	330
<i>Errors</i> assigned,	323
<i>Essoin-Days</i> ,	10
<i>Evidence</i> ,	292
<i>Executions</i> ,	205
—— Of charging Prisoners,	301

F.

<i>Fieri Facias</i> ,	212 to 216
<i>Filacers</i> of the Court of <i>King's Bench</i> ,	19
<i>Fines</i> on original Writs,	343
<i>Forms</i> in the <i>King's Bench</i> and <i>Common Pleas</i> ,	3

H.

<i>Habeas Corpus</i> . See <i>Writs</i> .	
—— Proceedings thereon,	232 to 240

I.

<i>Imparlance</i> , Entry thereof,	132
—— When by Original,	289
<i>Inquiry</i> of Damages, the Writ,	199, 346
—— Notice of executing the Writ,	202

The TABLE.

<i>Issues.</i> How to be made up,	Page 131
—— When and how to be entered on the Roll,	134
—— Rule for Plaintiff to enter his Issue,	141

I S S U E S.

<i>Cognovit actionem</i> as to Part, and <i>Nil debet</i> as to the Residue,	111
<i>Comperuit ad diem</i> to a Bail-Bond,	117
—— In Trespass and Replication and Rejoinder,	118
Conditions performed to a Bond, and Replication,	119
<i>Infra Ætatem</i> , and Replication,	121
<i>Ne unques Administrator</i> , and Replication,	127
<i>Ne unques Executor</i> , and Replication, <i>ibid.</i>	
<i>Ne unques Receptor</i> ,	126
<i>Non assumpsit</i> ,	102
—— By one Defendant, and Not informed as to the other,	110
<i>Non assumpsit infra sex annos</i> , and Replication,	114
<i>Non assumpsit</i> as to Part, and <i>Non assumpsit infra sex annos</i> as to the other Part,	115
<i>Non assumpsit</i> as to the second and third Promise, and the Delivery of a Piece of Cloth as to the first, and Replication,	112
<i>Non Culp</i> in Trespass,	101
—— In Case,	102
—— By the Husband, and Son assault demesne by the Wife; and Replication,	123
<i>Non damnificatus</i> to a Counter-bond, and Replication,	125
<i>Nil debet</i> ,	101
<i>Non demisit</i> ,	116
<i>Non detinet per Patriam</i> ,	117
<i>Issues</i>	

The T A B L E.

<i>Issues. Non est factum</i> to a Bond,	Page 103
<i>Per Dures</i> , and Replication,	121
<i>Per Minas</i> , and Replication,	122
<i>Plene Administravit</i> , and Replication,	116
<i>Riens</i> by Descent, pleaded by an Heir, and Replication,	128
<i>Son assault demesne</i> , and Replication,	122
<i>That Plaintiff was outlawed</i> , and Replication,	444
<i>Issues</i> and Demurrers,	317
<i>Judgments</i> with Trial, how to be entered on the Roll,	178, &c.
See amongst the <i>Postea's</i> .	
<i>Judgment</i> without Trial, how to be entered,	184
— By Warrant of Attorney how signed and entered,	182
— Arrested,	204
— Continued on the Roll, after executing Writ of Inquiry,	203
— On a <i>Demurrer</i> ,	310, 319
— Affirmed in Error,	325
— Reversed in Error,	326
— On <i>Audita Querela</i> ,	361
— Entry of Satisfaction acknowledged,	181
<i>Jurisdiction</i> of the Court of <i>King's Bench</i> ,	14
<i>Jurata</i> for the Assizes,	136
— Entry thereof,	137
— In <i>London</i> ,	<i>ibid.</i>
— In <i>Middlesex</i> ,	138
— Upon a Writ of <i>Scire Facias</i> ,	349, 351
— On an Original,	291, 349
— On an <i>Audita Querela</i> ,	350
— On a Writ of Error,	351
— When the Sheriff is a Party,	<i>ibid.</i>
<i>Jurors</i> . View by them,	147

The TABLE.

L.

<i>Latitat</i> , general and special,	Page 38
—— <i>Alias</i> and <i>Pluries</i> ,	43
—— Note for the Office, and Signing,	44
—— Into the County Palatine of <i>Lancaster</i> ,	40
—— ——— <i>Chester</i> ,	41
—— ——— <i>Durham</i> ,	<i>ibid.</i>
—— ——— <i>Cinque Ports</i> ,	42
—— Entry of a <i>Latitat</i> to save Statute of Limitations,	<i>ibid.</i>
<i>Law Municipal</i> of <i>England</i> ,	20

M.

<i>Marshal</i> ,	20
<i>Marshal's Court</i> , Directions thereto,	233
<i>Master</i> of the <i>King's Bench</i> Office,	16
—— Of the Seal Office,	20
<i>Memorandum</i> of a Declaration of the same Term,	133
—— Of another Term,	131
—— When above four Terms,	133
<i>Misnomer</i> pleaded,	105

N.

<i>Nolle prosequi</i> ,	339
<i>Non Omittas</i> Bill of <i>Middlesex</i> ,	37
—— <i>Latitat</i> ,	46
<i>Non Prosequendo</i> for not declaring after the Cause removed by <i>Habeas Corpus</i> .	331
—— For not declaring,	333
—— In three Days,	335
—— For not entering the Issue,	141
—— For Want of a Replication,	336
—— For Want of the general Issue,	337
—— After Joinder in Demurrer,	338
—— At Bar,	339
—— For not joining in Demurrer,	337
—— In Error and Rule,	329

Notice

The T A B L E.

Notice to the Tenant on Delivery of a Declaration in Ejectment,	Page 279
— Of executing Writ of Inquiry,	202
— Of putting in Bail,	53
— Of Exception against Bail,	54
— Of Declaration,	73
— Of Trial,	152

O.

Officers of the King's Bench,	15 to 20
Original Writs, and Proceedings thereon,	285,
	340
Outlawry, concerning it,	347

P.

Paper-Books, on Special Pleadings,	107
— On Demurrers,	321
Peers, Proceedings against them,	23
Pleas, General and Special,	101
— In Abatement,	103
— In Bar,	106, 277
Of Pleading several Matters,	129
Vide Issues.	
— To the <i>Scire Facias</i> against Bail, and Replication,	263
Of Pleading when by Original,	345
<i>Postea</i> . The several Forms thereof, and Proceedings thereupon,	155, 294
<i>Possession</i> , Writ thereon,	221
<i>Præcipe's</i> for Originals,	286, 340
Prisoners, Proceedings against them,	296
<i>Procedendo</i> ,	240 to 243
Proceedings by Original,	285
<i>Proviso</i> ,	139

Q.

<i>Qui tam</i> ,	40
<i>Quo minus</i> ,	24

R. R.

The T A B L E.

R.

<i>Rebutter,</i>	Page 130
<i>Recognizance. See Bail.</i>	
— Entered on the Roll against the Bail,	260
<i>Record of Nisi prius, how to be made up,</i>	134
— How to be sealed and delived at the <i>Nisi prius,</i>	152
<i>Rejoinder,</i>	130
<i>Relicta verificatione,</i>	194
<i>Remittit dampna,</i>	191
<i>Replevin,</i>	275
<i>Replications. See amongst the Pleas, and</i>	129
<i>Return of Writ, (calling on the Sheriff for it,)</i>	47
<i>Restitution, (Acknowledgment of it,)</i>	266
<i>Returns in King's Bench and Common Pleas, 7</i>	
<i>Rolls, how to be made up, entred, and carried in. See Judgments.</i>	
<i>Rule by Assent in Ejectment,</i>	283
— When by Original,	289
— To return Writ,	47
— To bring in the Body,	48
— To enter Issue,	141

S.

<i>Satisfaction how entered,</i>	181
<i>Scire Facias, and Proceedings thereon, 244, &c.</i>	
<i>Secondary,</i>	16
<i>Service of Process,</i>	22
<i>Sheriff's Court, Directions thereto,</i>	227
<i>Signer of the Writs,</i>	16
<i>Special Bail. See Bail.</i>	
<i>Statute of Jeofails, extended to Judgments by Confession,</i>	197
— For Amendment of the Law, 50, 146,	197, 315,
	<i>Statute</i>

The T A B L E.

<i>Statute</i> for preventing vexatious Arrests,	Page 22, 234
—— Limitations,	37
<i>Subpœna</i> for Witnesses at Trial,	149
—— On a Writ of Inquiry,	201
—— When by Original,	345
<i>Supersedeas</i> ,	267 to 274
<i>Surrebutter</i> ,	130
<i>Surrejoinder</i> ,	<i>ibid.</i>
<i>Surrendring</i> the Defendant,	256

T.

<i>Terms</i> and their Returns,	5 to 13
<i>Testatum Ca'</i> ,	343
—— <i>Alias</i> and <i>Pluries</i> ,	<i>ibid.</i>
<i>Tickets</i> for Witnesses, on a <i>Subpœna</i> to testify at the Assizes,	151
<i>Tickets</i> on a Writ of Inquiry,	202
<i>Tipstaff</i> ,	20
<i>Trials</i> , concerning them,	152
—— By <i>Proviso</i> ,	145
—— Notice thereof,	152
—— Costs for not proceeding to Trial,	153

V.

<i>Venire Facias</i> ,	138, 345
—— By <i>Proviso</i> ,	139
—— <i>De novo</i> ,	144
<i>Venue</i> ,	69
<i>View</i> by Jurors,	147

W.

<i>Wales</i> ,	2, 24
<i>Warrant</i> of Attorney to be filed, 51, 178,	184
—— Entred on the Roll,	184
—— To the Attorney to appear and plead,	282
<i>White-Chapel Court</i> , Directions thereto,	233

W R I T S.

The T A B L E.

WRITS.

<i>Attachments of Privilege,</i>	Page 223
<i>Bill of Middlesex,</i>	33
— Entry thereof on the Roll, to save the	
<i>Statute of Limitations,</i>	38
<i>Capias,</i>	342
<i>Capias ad Satisfaciendum, in Debt,</i>	205
— In Case on Promise,	206
— In Trespas on the Case,	207
— In Trespas,	<i>ibid.</i>
— In Trespas and Assault,	<i>ibid.</i>
— In Covenant,	208
— In Ejectment,	<i>ibid.</i>
— For several Damages in Trespas,	<i>ibid.</i>
— <i>Testatum</i> in Debt,	209
— <i>Testatum</i> in Case,	210
— Against the Bail in Debt,	<i>ibid.</i>
— Against the Plaintiff, for Costs on a Non-	
suit,	211
— On a Nonsuit after Verdict,	<i>ibid.</i>
— After a <i>Scire facias</i> ,	<i>ibid.</i>
— For an Administrator,	212
— For an Executor,	<i>ibid.</i>
<i>Certiorari</i> for all Complaints and all Attach-	
ments,	225
<i>Distringas Jurator</i> for the Country,	142
— In London,	143
— In Middlesex,	<i>ibid.</i>
— For a Trial at Bar,	144
— For a View by Jurors,	148
<i>Elegit</i> in Debt,	217
— After a <i>Fieri Facias</i> ,	219
— After <i>Elegit</i> , on Discovery of more Lands,	220
<i>Error</i> , and Entry thereof,	295
<i>Fieri Facias</i> in Debt,	212
4	<i>Fieri</i>

The T A B L E.

<i>Fieri Facias</i> in Case on Promise,	Page 213
—— In Covenant,	214
—— In Ejectment,	<i>ibid.</i>
—— In Trespafs,	<i>ibid.</i>
—— Against an Administrator,	<i>ibid.</i>
—— Against an Executor,	215
—— Against the Plaintiff for Costs to the Defendant,	<i>ibid.</i>
—— <i>Testatum Fieri facias</i> in Debt,	216
<i>Habeas Corpus</i> to remove a Cause out of the Sheriff's Court,	227
—— Returnable immediately before the Chief Justice,	<i>ibid.</i>
—— Before one of the puisne Judges,	228
—— In Vacation,	<i>ibid.</i>
—— On a <i>Capi</i> returned,	231
—— To remove a Person from the Fleet to the King's Bench,	229
—— Although sick,	232
—— To testify,	229
—— To prosecute,	230
—— To answer,	<i>ibid.</i>
—— To satisfy,	231
<i>Habere facias possessionem</i> ,	221
<i>Inquiry</i> of Damages,	199
—— Against an Executor,	200
—— When by Original,	346
<i>Latitat</i> ,	38
—— Entry thereof on the Roll, to save the Statute of Limitations,	42
—— Into the Counties Palatine and Cinque Ports,	40
—— <i>Alias</i> and <i>Pluries</i> ,	43
<i>Non Omittas</i> Bill of <i>Middlesex</i> ,	37
—— <i>Latitat</i> ,	46
<i>Possession</i> ,	221
	Privi-

The T A B L E.

<i>Privilege,</i>	Page 223
<i>Procedendo,</i>	240
— Upon a <i>Certiorari</i> ,	242
— Upon a <i>Latitat</i> ,	<i>ibid.</i>
<i>Scire Facias</i> against an Administrator, upon a Judgment recovered against the Intestate,	254
— Against an Executor upon a Judgment recovered in the Testator's Life,	253
— Against Bail in Debt,	257
— In Case,	259
— In Debt after a Year and a Day, to re- vive a Judgment,	244
— Against Ter-tenants,	246
— In Case on <i>Assumpsit</i> after a Year and a Day,	245
— In Trespass,	246
— In Trespass on the Case,	245
<i>Subpœna</i> to testify at a Trial,	149
— On a Writ of Inquiry,	201
— On Original,	345
<i>Supersedeas</i> for not declaring in two Terms, on the Defendant's filing common Bail,	269
— On the Defendant's filing common Bail, by Order of the Judge,	270
— For a Clerk,	271
— On a <i>Habeas Corpus</i> after a <i>Procedendo</i> ,	272
— for the Defendant, after Bail put in,	274
<i>Testatum Capias</i> ,	343
<i>Venire Facias</i> ,	138, 345
— <i>De novo</i> ,	144
— By Proviso,	139

F I N I S.

